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MODERN PRECEDENTS
IN
CONVEYANCING.

LONDON:

PRINTED BY THOMAS DAVISON, WHITEFRIARS.

MODERN PRECEDENTS

IN

CONVEYANCING;

WITH

VARIATIONS

ADAPTING THEM TO DIFFERENT CIRCUMSTANCES OF TITLE:

AND

COPIOUS EXPLANATORY AND PRACTICAL

NOTES,

ON THE NATURE AND USE OF THE PROVISIONS CONTAINED IN THEM.



Third Edition,

WITH GREAT ADDITIONS,

INCLUDING

*DIRECTIONS FOR THE SOLICITOR IN ALL MATTERS CONNECTED
WITH EACH ASSURANCE.*



BY CHARLES BARTON,

OF THE INNER TEMPLE, ESQ. BARRISTER AT LAW, AUTHOR OF THE ELEMENTS
OF CONVEYANCING.



Validiora sunt exempla quam verba, et plenius opere docetur quàm voce.



VOL. I.

PURCHASE DEEDS.



LONDON:

PRINTED FOR CHARLES HUNTER, LAW BOOKSELLER,
BELL-YARD, LINCOLN'S-INN.

1821.



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TO THE THIRD EDITION.

THE object and plan of this work having been fully explained in the preface to the former editions (which is here subjoined), all that can now be expected of the author is to say how this edition differs from those.

The former editions were designed chiefly for the use of STUDENTS in conveyancing; whilst this has been adapted more especially to the use of SOLICITORS. Hence (amongst other additions) Practical Observations, under the title of DIRECTIONS TO THE SOLICITOR, are now for the *first* time introduced, for the purpose of instructing the YOUNG PRAC-

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TITIONER as to what it will belong to him to do on the part of his client, in whatever may relate to the particular transaction before him; but although these are designed more expressly for the young practitioner, yet they will not, it is presumed, be found wholly useless to the solicitor of more experience, as they may possibly serve to remind him of what, however well known to him on reflection, might not immediately occur to him on every requisite occasion.

A variety of new precedents arising out of late acts of Parliament* and judicial decisions has also been inserted into this edition, and many of the precedents in the former editions have been altered in conformity to the same statutes and decisions; many of them also have been greatly simplified by omitting from the text, and throwing into the form of a

* See in particular the late *annuity, bankrupt, land tax, inclosure, copyhold, attestation, and insolvent acts*.

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variation, all such provisions as appeared adapted rather to special than to ordinary transactions.

A great many additional notes have likewise been subjoined ; which are so framed as not merely to bring the law down to the present time, but also to show and familiarize its application in practice.

And that no assurance might be omitted which the solicitor could possibly have occasion for, all the printed collections of acknowledged reputation have been consulted, and such of the forms contained in them, as were thought applicable, made subservient, under a more simple or efficient shape, to the ends of the present work*.

* Those to which allusion is here made are *Bridgman*, *Lilly*, *Horseman*, *Williams*, and *Powell*. In this enumeration it will probably be noticed, that the well known collection of *Wood* has been omitted. The profession will not,

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In short, nothing has been intentionally neglected which the industry or experience of the author could supply, to render the present edition as useful and as perfect as possible ; and when combined with the Supplement of MISCELLANIES, so ably prepared by Mr. WILDE (and which forms a component part of the

it is hoped, attribute this omission to the circumstance of that work being about to be published by the booksellers with a view of opposing the present.—The author scorns to suffer himself to be actuated by such unworthy motives.—Indeed his opinion of that collection was in the possession of the public long before the present work was in contemplation, and it appears to be by no means singular to himself. See the case of *Seymour v. Barker*, 2 Taunt. Rep. 202, where *Per Heath*, Justice,—“ *Wood* is a book of no authority ; it is a very indifferent collection of precedents.” An observation which, the author trusts, is a sufficient sanction for his own opinion.

The author is however bound in candour to add, that the gentleman to whose care the announced edition is committed is competent to give to it every amendment of which it is susceptible ; it is too radically faulty, however, he thinks, ever to be made a work of much value.

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present work), it will, it is hoped, be found to comprise every information, and form of assurance, which the conveyancing draftsman, or solicitor, can ever have occasion for in the ordinary course of his practice.

A good INDEX being essential to the utility of a work of this kind, great pains have been taken to make that which is annexed to the present volumes both copious and explicit, for which purpose the synthetical as well as the analytical form has occasionally been adopted.

LINCOLN'S INN,
Michaelmas Term, 1820.

*Just published, for J. and T. W. Clarke, Portugal Street,
Lincoln's Inn.*

**A NEW AND IMPROVED EDITION
OF
MR. BARTON'S ELEMENTS OF CONVEYANCING.**

The Publishers beg to offer to the Profession the following testimonies of the merit of the *first* editions of Mr. BARTON's works.

" Mr. Barton's **ELEMENTS** will be found an useful part of the library of a conveyancer."

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" This work must, we think, prove a most acceptable and valuable addition to the library of all those who practise in the particular branch of the profession to which it relates.—Other writers have done much, separately, for the profession, but Mr. Barton is the only one who has presented the student with a complete body of general information; and it is his merit that he has left little to be sought for in other works, by those who are possessed of his **ELEMENTS**." *Law Journal*, May, 1811.

" No legal work has attained greater celebrity than the **PRECEDENTS** of Mr. BARTON, nor apparently with greater justice." *Per* Sergeant PELL, in *Lys v. Morgan*, C. B. *Michaelmas Term*, 1813.

P R E F A C E

TO THE

FIRST EDITION.

NOTWITHSTANDING the great improvements which have of late been made in the Science of Conveyancing, no **Precedents of Assurances**, framed on the principles of those improvements (except in the single instance of **MARRIAGE SETTLEMENTS**, edited by Mr. BIRD), have as yet been offered to the Public. And indeed had those which are now in print received that advantage, they would by no means, it is conceived, have precluded the necessity of the present work; for having been obtained solely by the casual opportunities afforded by professional practice, and having generally been submitted to counsel either on account of some **SPECIAL** circumstances attending the title, or for the purpose of securing the distinct interest of some particular parties, they will be found, as might be expected, not only defective as a **BODY** of **Precedents**, but also to be frequently either of too **SPECIAL** a kind to be of use in the ordinary course of business, or too **PARTIALLY** drawn to be relied upon in **GENERAL** cases.

To supply these defects, an attempt has been made in

PREFACE.

the ensuing volumes to furnish the PUPIL and SOLICITOR with a SERIES of correct Forms of such Assurances, as from being founded upon the most COMMON CIRCUMSTANCES OF TITLE, are calculated to be more extensively useful than those of which the Public is at present in possession; and from having been prepared with a view to protect the interests of ALL PARTIES INDIFFERENTLY, will be found more uniform, and, it is hoped, more correct, in their construction.

This series the author has endeavoured to render as complete and perfect as possible, by proceeding gradually from the most simple, to the more varied circumstances of estate and title: and where these circumstances are such as materially to vary the operative and essential parts of the deed, a separate form has been given, adapted to those circumstances; but where they are merely FORMAL, i. e. COLLATERAL only to the main object of the deed, the variations to which they give rise are subjoined by way of annotation.

By this means a vast variety of forms is produced without any of them becoming intricate or ambiguous, or the series being extended to an inconvenient length:—An example will explain what is here meant. The first conveyance to a purchaser by LEASE AND RELEASE is founded upon circumstances of the conveyance being of the *entirety*, of an estate of *inheritance*, in *possession*; the vendor entitled by *descent*; the sale by *private contract*; the purchase money *paid down* on executing the conveyance; and the *title deeds delivered* to the purchaser.

But in order that the same form may serve as a precedent in every other case to which it could conveniently be made applicable, it has been adapted, in the notes subjoined, to the circumstances of the vendor being entitled by *purchase*; the conveyance being of a *moiety*, or other

PREFACE.

portion only, or of the *remainder or reversion*, of the estate ; part of the estate being *copyhold*, the sale by *public auction* ; or by the direction of the *Court of Chancery*, or *Exchequer* ; the *purchase money* paid by a transfer of *stock* ; or paid into the *Bank* to the credit of a cause depending ; the *title deeds retained* by the vendor ; or part of the purchase money *secured on the estate*.

And every other precedent in the series is (together with the same variations) made to provide for the further circumstances of the *wife of the vendor being entitled to dower* ; the *vendor having taken the estate to a trustee for the prevention of dower* ; and the *purchaser taking the estate to a trustee for the same purpose* ; together with other occasional variations of a *more special kind*.

Thus each precedent has been adapted to all the different circumstances which most USUALLY occur in a title, without materially increasing the bulk of the collection ; and it is apprehended that scarcely any kind of assurance (unless it be so specially circumstanced as to require the aid of counsel, or be so simple as to render any other precedent than such as are to be met with in every office unnecessary) can happen, of which a form will not be found by referring to the INDEX of the present volumes.

The prevailing wish for CONCISENESS in drafts has also been thought worthy of attention, on account of the great pressure of the stamp duties ; all tautologous and circumlocutory phrases, and synonymous and inoperative words (in which the printed forms hitherto published are so abundant), have, therefore, been rejected, and, where it was deemed necessary, more appropriate and effective words substituted in their room : such parts of each precedent as may in general be omitted without danger to the interest of the client have, for the same purpose, been distinguished from the rest, that they may be retained or

PREFACE.

omitted at pleasure*; but that these omissions may not be indiscriminately made, without a proper attention to circumstances, references are given to prior annotations, where the import and use of those particular clauses are explained.

Hence each conveyance may be drawn either FULLY, or SUCCINCTLY, as the importance of the subject or the wishes of the parties may require, and that (as it is conceived) by the most inexperienced pupil.

To further the same object of conciseness, a SHORTER FORM has likewise been annexed to each CLASS of deeds, for the purpose of being used in cases where more than an ordinary degree of brevity may happen to be particularly desirable.

On the other hand, where recent statutes or decisions have rendered additional provisions necessary for the security of the parties, clauses framed to answer those purposes have been introduced; but that they may not be unnecessarily inserted upon every occasion, the reason of their introduction is at the same time noticed.

A further improvement has been attempted by introducing the CHARACTERS sustained by the several parties to the deed, instead of the ordinary mode of assuming their NAMES or INITIALS, which, where the parties are numerous, and convey in different capacities, is often not a little embarrassing to a young practitioner.

For greater convenience in practice, the precedents have been distributed into CLASSES corresponding to the different objects they are intended to effectuate, that is to

* Those parts of each precedent which may in ordinary cases be omitted are circumscribed within brackets.

N. B. In the present edition these parts of the precedents are left out, and referred to as variations.

PREFACE.

say, I. PURCHASE DEEDS. II. LEASES. III. MORTGAGES. IV. ANNUITY DEEDS. V. Deeds between DEBTORS and CREDITORS. VI. Deeds of COPARTNERSHIP. VII. MARRIAGE SETTLEMENTS. VIII. WILLS. And IX. MISCELLANIES*.

To which has been added a very COPIOUS and PARTICULAR INDEX †, as well to the several precedents, as to the particular provisions, &c. contained in them.

* The head of MISCELLANIES has since been published, by Mr. Wilde, in the form of a SUPPLEMENT, distinctly from the rest of the work.

† As this index was not prepared by the author himself, he may be permitted to say, that it is, in his opinion, the very best that has ever yet been affixed to a law publication; it may in truth be considered as an alphabetical epitome of the law and practice of conveyancing.

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PRACTICAL DIRECTIONS

TO

SOLICITORS

ON THE SALE OR PURCHASE OF ESTATES BY THEIR CLIENTS.

IT has been noticed in the preface to this work, that practical remarks would be either prefixed or subjoined to each class of assurance, by way of directions for the solicitor of each party to the transaction, as to what it belongs to him to perform on the part of his client, whether during the pendency of the negotiation, or at or after its conclusion. The first precedent will be found to be “*An agreement for the sale of an estate of inheritance in fee-simple*,” as to which I shall notice, first, what is necessary to be done by the solicitor for the vendor; and secondly, what by the solicitor for the purchaser, to secure the interests of their respective clients; and for the sake of method, and the greater convenience of reference, I shall consider these requisites as

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1st, *BETWEEN THE INCEPTION OF THE CONTRACT, AND THE DELIVERY OF AN ABSTRACT OF TITLE.*

2dly, *FROM THE DELIVERY OF THE ABSTRACT TO THE ACCEPTANCE OR REJECTION OF THE TITLE, AND*

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And I shall moreover subjoin to each precedent some observations on what remains to be attended to by the solicitor for the purchaser at or after the execution of the assurances.

I. OF THE DUTY OF THE SOLICITOR FOR THE VENDOR.

I. Between the inception of the contract and delivery of the abstract of title.

Agreement to
be put into
writing.

If the contract be not already reduced into writing and signed by the parties, the vendor's solicitor should see that this be done forthwith, for unless it be in writing no more will the purchaser than the vendor himself be bound (1). But this will be the province of the purchaser's solicitor to prepare, and afterwards submit to the vendor's solicitor for approval.

Signature of
purchaser to the
draft of agree-
ment.

When the contract is in writing, if the estate is considered to be well sold, it will, in order to guard against intermediate accidents, be in general proper to procure the signature of the purchaser to the draft of the agreement as soon as the terms of it are finally settled, more particularly where there are several purchasers, as some of them, either from subsequent reflection, or the intervention of some unforeseen event, may be desirous of departing from the contract. And it may here be noticed,

(1) See post **AGREEMENTS**, No. I. n. (1). The mode often practised of receiving a small sum of money by way of deposit, and as an earnest of the bargain, it may be proper to observe is wholly fallacious and nugatory. As to when it will be proper on the part of the purchaser that the agreement should be put into writing, and when not, see post.

that where the contract for sale is entered into by an agent on the part of his principal, by virtue of a power given to him for that purpose, the agent must not sign his own name to the agreement, but that of his principal, lest he become himself liable to guarantee the performance of the stipulations he has entered into on his principal's behalf (a).

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Agent to sign
name of prin-
cipal.

~~The next thing which it belongs to the solicitor for the vendor~~ to do is to apprise his client of the consequences resulting from the contract.

The immediate consequence of the contract for sale is an equitable conversion of the land into money, it being no longer considered as real but as personal estate in the hands of the vendor, and will consequently be subject to all the incidents consequential upon this conversion; thus, in case of the vendor's decease intestate, it will belong to his personal representatives, and not to his heir at law; who will therefore not only lose his inheritance to the amount of the value of the land, but the widow of the vendor her dower (unless where her concurrence by fine is necessary to complete the contract), and that although the contract should eventually be abandoned, and no sale actually take place (b). And if the vendor have devised the estate, the devisee will not be entitled to the purchase money in lieu of the land, but it will go in augmentation of the personal estate of the testator, for the contract for sale (if such as the court would decree to be performed) will operate as a revocation in equity of the devise (c), and it is by no means

Vendor, on
agreement for
sale, should be
apprised of the
consequences of
the contract.

(a) See *White v. Cuyler*, 6 Durn. and E. 176. *Wilks v. Black*, 2 East, 142.

(b) See *Lechmere and Carlisle*, 3 P. Wms. 211. and *Elements of Conveyancing*, p. 6. second edition, where this subject is more minutely discussed.

(c) *Cotter v. Large*, 2 P. Wms. 623. *Vawson v. Jeffrey*, 16 Ves. 519.

PURCHASES. certain that it would be restored by the contract being subsequently abandoned (a), unless for defect of title (b): hence the attention of the vendor should be invited by his solicitor to any disposition he may have made of his property by his will, that his intentions as to the distribution of it may not be frustrated by this notional conversion of his land into money.

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Vendor after
contract for sale
need not insure.

The land agreed to be sold being no longer the property of the vendor but of the purchaser, for whom the vendor is only a trustee, it also follows that he will after the completion of the contract be exempted from the necessity of insurance or other care for its preservation.

The solicitor's attention must thirdly be carried to the subject matter of the contract, as to which the following observations occur.

Vendor's soli-
citor to ascer-
tain the quality
of the estate.

If the contract on the part of the vendor be not at present binding upon him as not having been put into writing, and signed by him, the first care of his solicitor, on the agreement being submitted to him for approval (for it will belong to the purchaser's solicitor to prepare it), will be, to ascertain and describe with accuracy the exact interest which the vendor has in the land, the quit rents, or other annual or gross payments or charges (if any) to which it is subject; the quality or legal nature of the estate, and the county or place where it is situated; for if the interest of the vendor differ ever so little (whether as being for a less term or duration of estate than he has contracted to sell (c), except for the fraction of a year or so (d), or as being copyhold or leasehold instead of freehold, a derivative instead of an original interest, or if it be subject to a quit rent

(a) See observations of Eldon, Ch. in *Kuolly v. Alcock*, 7 Ves. 558.

(b) *Rose v. Cunningham*, 11 ib. 550.

(c) *Farrer v. Nightingale*, 2 Esp. Rep. 639.

(d) *Bilworth v. Hassell*, 4 ib. 140.

however inconsiderable (a), or be situated in a different county from that mentioned in the agreement (b),) it may probably not answer the object the purchaser had in view in entering into the contract, which may have been made under a power or directions to purchase lands of a particular tenure; or to qualify him to exercise an official duty or the like; in which cases he will at law be at liberty to rescind his contract, and it is only under particular circumstances that a court of equity will interfere, and oblige him to complete his purchase by accepting of an indemnity, or of an abatement of price (c). If, therefore, there prove to be any error in these respects, which are afterwards discovered by the purchaser's solicitor, the discussion they will give rise to may occasion a very inconvenient delay to the vendor, or an ultimate relinquishment of the contract.

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And where the sale was by public auction, it will be proper that the solicitor of the vendor should be prepared with two parts of an agreement for the completion of the purchase by the respective parties upon the terms mentioned in the conditions of sale; for it appears to be determined by the latest decisions, that sales of real estates by public auction are within the statute of frauds, and not binding upon the purchaser, unless the contract be put into writing, and signed by him or his agent (lawfully authorized) (d); the signature alone of the

Where sale by
auction vendor
should have
agreements
ready.

(a) *Barnwell v. Harris*, 1 Taunt. 430.

(b) *Drewe v. Hanson*, 6 Ves. 695. *Drewe v. Corp*, 9 ib. 368.

(c) See the cases of *Guest v. Homfray*, 5 Ves. jun. 818. *Mortlock v. Buller*, 10 ib. 306. *Dyer v. Hargrave*, ib. 505. *Halsey v. Grant*, 13 ib. 73. *Horniblow v. Shirley*, ib. 73. 81. *D. Norfolk v. Worthy*, 1 Camp. 337. *Millijau v. Cooke*, 16 Ves. 1. *Daniels v. Davison*, ib. 249. *Mason v. Corder*, 2 Marsh. 332. also 1 Ves. and Bea. 225.

(d) See *Stansfield v. Johnson*, 1 Esp. Ca. 101. *Walker v. Constable*, 2 ib.

PURCHASES. parties is for this purpose sufficient without sealing or delivery ;

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indeed either of these would, in most cases, be improper, and give room for construing the instrument to be a deed, and requiring an accordant stamp.

If deposit money paid, it should be invested.

On an agreement for the sale of an estate, it is not unusual for the purchaser to be required to pay down a part of the purchase money by way of deposit, which if the purchase go off for want of title, is to be returned to the purchaser with interest, in the mean time. The risk of this money falls upon the vendor whilst it remains in his custody (a), unless it be invested upon some security expressly approved of by the purchaser. Where, therefore, a deposit has been paid, the vendor's solicitor, if he find any considerable delay is likely to take place in making out the title, should apply to the solicitor of the purchaser to obtain a written consent for its being invested in some particular funds, to be mutually agreed upon between them (b).

Notice from purchaser of money being unproductive.

And should he receive notice from the purchaser that the whole or the remainder of his money is ready and unproductive to him, in this case also he should endeavour to agree with the purchaser's solicitor for its investment.

Vendor's title should be submitted to counsel.

The preliminary contract being settled, the vendor's title should be immediately submitted by his solicitor, to the examination of counsel on his behalf; this should seldom be omitted, for should there be any defects in the title, it may be

659. 1 Bos. and Pul. 306. S. and Buckmaster v. Harrop, 7 Ves. jun. 341. 13 ib. 456. Coles v. Trecothick, 9 ib. 234 and vide Blagden v. Bradbear, 12 ib. 466.

(a) Roberts v. Massey, 13 Ves. 561. Ackland v. Gainsford, 2 Mad.

(b) And see Sug. on Vend. and Purch. 39.

of considerable importance that they should be supplied before the abstract is laid before the purchaser's counsel, for if they be of a nature to be obviated, and the agreement be not in writing, it may be made subject to such stipulations or conditions as will preclude an unwilling purchaser from insisting upon trivial objections for the purpose of delay; or if it be in writing, the vendor may admit his inability to perform his contract, and abandon it without exposing the defects.

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In order to prevent all unnecessary delay in the completion of the sale (which may frequently be of very serious inconvenience to the vendor), it may not be improper to offer to the young solicitor some hints upon the form and essential requisites of the abstract of a title to freehold hereditaments (those being the subject of our present remarks), whether to be submitted to his own counsel, or the purchaser's solicitor; in doing which, however, I shall confine myself chiefly to those things which, although material for the examination of a title, I have discovered from experience to be but seldom regarded. To have gone further than this, and set forth every minutia to be observed in the formation of an abstract, would have exceeded the objects I have in view in these remarks, which are not to give the first rudiments of instruction to those who possess no information at all upon the subject, but to aid the recollection or the judgment of those who already possess the ordinary share of knowledge belonging to young practitioners.

Instructions
for preparing
the abstract of
title for the
vendor's
solicitor.

First, then, if the lands sold be of a different nature, as part freehold and part copyhold, or leasehold, the titles should be deduced by separate abstracts, for as different species of

Title to different
kinds of pro-
perty should be
deduced in se-
parate abstracts.

PURCHASES. tenures are governed by distinct rules of construction, the mind is embarrassed and fatigued by the examination of the titles to different kinds of property at one and the same time, and is of course rendered less active and vigilant in the detection of inaccuracies. They should never, therefore, be comprised in the same abstract if it be possible to avoid it.

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Vendor's title
to be deduced
for 60 years
past.

The deduction of the vendor's title should be from a period of at least 60 years past, because rights accruing subsequent to that period may generally be successfully asserted, and hence a title from a less distant time would probably be rejected by the purchaser's counsel; but unless in the cases, and for the reasons afterwards noticed, it should not be made to commence earlier, lest old defects or doubts may be disclosed which might give a handle to dilatory objections.

Should commence with a deed or will, or referring to a prior deed.

The instrument to be selected for the commencement of the title should be some deed or will in which no reference is made to any prior assurance; for in such case the then proprietor not only appears to have been the purchaser, or other actual owner of the estate, but on a subsequent lapse of 60 years without disturbance he must necessarily be presumed to have been rightfully so; but where reference is made to any preceding instrument, such reference amounts in equity to constructive notice of the contents of the instrument referred to, and it will, therefore, probably be required, by the counsel for the purchaser, to be abstracted, on the reasonable grounds that it may disclose some fact prejudicial to the title, and to which the purchaser would of course, at law, (and having this constructive notice), would also in equity, take subject.

If, therefore, the deed which in other respects you conceive would be a fit one to commence with, contain such recitals,

it will be proper to go back to some prior deed free from this objection. **PURCHASES.**

And the going further back with the title for the purpose of abstracting a deed referred to, is particularly requisite where such deed is the foundation of the deed referring to it. As a deed in execution of a power or trust, a settlement made in pursuance of preliminary articles, and the like, because the validity of the latter deed may, and generally will depend upon the former. And in abstracting deeds of this kind every circumstance should of course be stated, which is necessary or has a tendency to show that the derivative deed is correctly framed.

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When title to
commence
earlier.

An abstract should also be furnished, when it can be done without prejudice to the title, of deeds or wills by which any estate tails were created, although made upwards of 60 years ago, if they be extant, and if not, it should be so stated, for although the title cannot in general be objected to for want of their production, yet it is so constant a practice to call for them, that the withholding them without a reason assigned would probably be the means of prolonging the time of completing the purchase.

Deeds creating
entails should
be abstracted
although more
than 60 years
old.

And where a title commences with a recovery or fine, by which a prior estate tail is stated to have been barred, it is usual to require an abstract of the deed creating the entail, as without knowing the circumstances of the entail, and what the remainders over were, it cannot be ascertained whether they are bound by the recovery or fine; but although this information is very desirable, it cannot be insisted upon unless some reasonable grounds of suspicion be disclosed by the abstract of some outstanding entail, because a 60 years title must be presumed to be good until evidence be produced tending to impeach it; as, for instance, where the estate tail seems to have been that of the wife *ex provisione viri*, in which case, as such

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So where the first deed of 60 years duration is an appointment under a power, it will be proper, whether such power be recited or not, that the title should go back to the deed in which the power is contained; but for the reason just given a requisition of the kind may, unless under particular circumstances, be resisted.

So of marriage
articles.

So where the deed is a settlement made in pursuance of previous articles, it is essential that the articles should be abstracted, because if it be not made in conformity to such articles, it will *pro tanto* be void; and the lapse of 60 years from the date of the settlement will not avail, as the interests of children which could not be asserted in the lifetime of the parents, will generally keep the title open down to a much more recent period.

Wills to be abstracted,
although upwards of 60
years.

Other instances of the necessity of a title going further back than 60 years are, where a person is stated to claim as devisee; in which case the will should be abstracted, although more than 60 years may have passed since the death of the testator, because by the true construction of the will he might possibly have taken an estate for life, or other particular estate only, instead of a fee-simple or an estate tail, and the remainders over may be still capable of taking effect.

Grants from the
crown.

Also in titles derived originally from the crown, as rectorial tithes, the grant of the crown, however ancient, may be required, and should therefore be abstracted, that it may be seen whether any reservation of rent, or any remainder or reversion be retained or reserved, which not being barrable by fine or recovery, must, if there be any, be presumed to be still out-

(a) See Stat. 32 Hen. 8. c. 28.

standing (a); but as this is the only reason upon which it can be called for, the intermediate conveyances prior to 60 years past need not be abstracted, as any estate or interest created by them would, as against a subject, be barred by the general statute of limitations; as would also all other titles, even in the crown, be by that of 9 Geo. 3. c. 16. except only as in the act is mentioned.

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And so of advowsons if in gross, i. e. not appendant to a manor, for to these the statutes of limitations do not extend, and a 60 years title to them might be no more than during the lifetime of a single incumbent, whereas a series of presentations by the predecessor or predecessors in title are necessary to show an undisputed enjoyment: so also of pews in churches (b).

So grants of
advowsons,

or of pews.

So where a term of years is noticed in a deed with which it was proposed to commence the title, the abstract must go back to the deed creating the term, in order to show (unless this appears by the recitals of some subsequent deeds) the purposes for which it was created, as it might have been to raise money at periods which have not yet arrived, or there may be a reversion expectant upon it not set out in the subsequent deeds; and all the intermediate assignments should also be abstracted if in the vendor's possession, for although these will, generally speaking, be presumed (c), and therefore cannot, it should seem, be in strictness required, unless circumstances generate suspicion of their being suppressed (because the known casualties incident to length of time are alone sufficient, *ceteris paribus*, to account for the loss of title deeds, and other recitals in the subsequent deeds of the origin of the term it is clear would be conclusive against all persons parties to such deeds,

And so of deeds
creating long
terms for years.

(a) And see 1 Prest. Abstr. 280. (b) *Stock v. Booth*, 1 Durnf. and E. 428.

(c) 2 Blac. Rep. 1228.

PURCHASES. and those claiming under them, which will generally be found to be a bar to future claimants (*a*),) yet the practice is to expect it, and therefore delay would probably be occasioned by the omission.

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Steward's appointment should be abstracted.

Lastly, if the subject of the title be a manor to which a steward is attached, which is usually the case, it is properly noticed by Mr. Sugden (*b*), that the instrument by which he was appointed should be abstracted, as it may be for a period or on conditions which may deteriorate the value of the manorial rights.

But in general the abstract should not commence earlier than from 60 years' date.

But except in cases like those I have noticed, the going back beyond a period of 60 years is not only unnecessary, but, as I have before observed, should, if possible, be avoided, as it frequently discloses some dormant interest of which no account can now be given, and which, although not perhaps of a nature to authorize the purchaser to reject the title, yet often occasion much tedious discussions and delay, to the great inconvenience of the vendor, and which by a greater degree of circumspection on the part of his solicitor, or by a previous submission of the title to counsel on his behalf, might have been prevented.

Unless vendor have anterior deeds.

It is to be observed, however, that if the vendor be in fact possessed of evidence of his title prior to 60 years, he cannot withhold them from the purchaser, should they be required; for a purchaser for a valuable consideration has a right to all the information concerning the title which the vendor can furnish him with, and a recent case has shown the possibility of a title being defective and impeachable, notwithstanding an undisturbed possession of 60 years, by reason of remote claimants expectant upon the determination of a particular estate, which had continued for a much longer period (*c*).

(*a*) See *Earl dem. Goodwin v. Baxter*, 2 Blac. Rep. 1228.

(*b*) See *Vendor and Pur.* 223.

(*c*) See *Goodright v. Torrester*, 1 Taunt. 585.

But in some cases it happens that the vendor is not able to show his title by any will or conveyance so early as 60 years back, by reason of the title deeds having been lost, or his title being deduced solely through a series of descents; in which cases his solicitor should search for and furnish copies of ancient abstracts, counterparts of leases (or the registry of leases if in a registrar court), assessments to the land-tax, family terriers, plans of surveyors, charts, authenticated pedigrees, and all such other documents as are calculated to furnish evidence of an undisturbed possession and exercise of ownership by him, his ancestors or predecessors; which alone in the absence of contrary evidence leads to a strong presumption of indefeazibleness of his title.

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If no deeds of
60 years' date,
terriers, &c. to
be produced.

And in this case all recitals and statements contained in the deeds in the vendor's possession, which have a tendency to show that each assurance was duly made, and competent to give effect to the intention of the parties, should be fully set out; as recitals of this kind, after a considerable lapse of time, are generally deemed sufficient evidence of the facts stated, and would, under the direction of the judge, be so presumed by a jury.

And in such
case recitals, &c.
should be ab-
stracted.

And as the statement of a fact in a deed is conclusive upon all parties by whom it is made, and all persons claiming under them, the deduction of an anterior title by the recital of a descent or devise to the person from whom the deeds deduce it, is generally deemed sufficient evidence of such prior title, where the authentic documents carry it back to a period bordering upon the period of 60 years; and where evidence of length of possession without disturbance is produced, the title cannot be refused, even though no title deeds at all are shown; as deeds, although generally the most satisfactory, are not the only evidence of a title; and if a vendor can show his title to be

PURCHASES. good by evidence of any admissible kind, the purchaser must receive it, and cannot insist upon having any particular species of evidence to the exclusion of all other (a).

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*As to abstracts
of title to lands,
&c. taken in
exchange.*

Where the title is founded on an exchange of lands, and such exchange was effected by a proper deed of exchange as used at the common law (even although made in pursuance of an act of parliament), the vendor's solicitor must provide an abstract, not only of the title to those which were conveyed to the vendor in exchange, but also to ~~those which were~~ given or conveyed by him in ~~exchange~~; for by reason of the warranty annexed to a deed of exchange, if the title of either party to the lands given by him in exchange be defective, the other party upon eviction may re-enter upon those he parted with in exchange, even though they may have been since sold and conveyed to a *bona fide* purchaser for a valuable consideration; whose only remedy would be an action for damages to the amount of the loss he had sustained, or a tedious process of law to recover back the lands given by him in exchange.

This requisite, it is to be observed, however, occurs only when the exchange is made by a proper and legal exchange, and not where the lands exchanged are conveyed to the respective parties by mutual or reciprocal conveyances; for the consequences above noticed arise from the warranty of title implied by an exchange at the common law, but which is not implied in any other species of assurance.

*Or under a
partition.*

And an attention to principle suggests a similar precaution where the title is derived under a partition by coparceners, for as the same warranty of title is implied, and consequently the same right of re-entry subsists in case of the eviction of either

(a) And see 1 Prest. Abstr. 23.

party, an abstract of the title of each of the partitioning parties at the time of the partition, should be furnished to a purchaser of the share which either of them took under the partition deed.

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A similar remark to the foregoing applies even where the exchange is made by virtue of an enclosure or other act of parliament, unless where such act (as in the case of enclosures it commonly does) imposes the same charges, &c. on the lands received, as affected those parted with, for if not, or if the title be absolutely bad or defective, it will be the same, and, therefore, in order to show the title of the vendor to the lands allotted to him, he must (unless the necessity of this is precluded by some clause in the act) furnish an abstract of his title to those in lieu of which the allotment was made; for if he had no title, or a defective title to those lands, he can have no claim or better title to any other which may have been awarded to him in lieu of them.

And allotments
under enclosure
acts.

And where the lands allotted to the vendor are taken by way of exchange for other lands, not part of the waste, but belonging to former proprietors, as often happens where the inclosure is of common fields, the title of such proprietors should likewise be shown, unless (as was before observed) rendered unnecessary by some protective clause in the act, for they will otherwise be subject, in the hands of the new proprietor, to the same charges or defects to which they were liable in the hands of the original owner.

The inconvenience which often arises in the examination of titles, from an inattention in the preparing of the abstract of the deeds, suggests to me that it may not be improper to notice some of those requisites in which I have discovered them to be

Directions for
abstracting of
deeds in
general.

PURCHASES. most frequently defective, as much delay and expense are prevented by an abstract being so perfect on its first delivery, as to render unnecessary all further evidence or explanation. I shall not, however, descend to those minutiae of forms and common-place arrangements, which custom, combined perhaps with convenience, has made so universally prevalent as that every is one acquainted with them who is at all conversant in professional practice, but notice those only which, although material or greatly useful to be attended to in the framing of an abstract, are, either from ignorance or inattention, generally neglected (2).

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**Characters and
residence of
Parties to be
stated.**

The first thing upon which I conceive it necessary to remark, as what I have perceived abstractors of deeds to be frequently remiss in, is in not stating the characters of the parties to the deed, as whether heirs at law, executors, or the like; an informality which is often of great help in ascertaining the legal effect of the assurance, where it is not disclosed, as it frequently is seen, in the subsequent parts of the deed: the place of residence of the parties is also frequently useful to be known, and in deeds of modern date should seldom be omitted, as it often serves to distinguish persons of the same family and name, and also facilitates the search for incumbrances, deaths, and the like.

Recitals.

Another common omission is the neglecting to state the recitals. The substance of all the recitals in a deed should be given in the abstract, as recitals often tend very materially to throw light on the state of the title. The very eminent practitioner to whose work I have referred below, makes a distinction between those which are of importance to the title

(2) See also Mr. Preston's Essay on Abstracts of Title, a work to which I should have oftener referred, but from the circumstance of the present essay being in the press at the time that instructive work was published.

and those which are not; but the purchaser's counsel has evidently himself a right to form a judgment of this matter, and not trust to that of the vendor's solicitor; indeed, if the facts were considered to be of sufficient importance to be stated in the deed itself, they cannot, at least *prima facie*, be deemed wholly unimportant to the title.

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The recitals are, indeed, as before observed, often a very material clue to the construction of the deed, and should, therefore, so far as regards the purport of them (but in general nothing further), be invariably set out in the abstract more particularly, as before noticed, when the title deeds do not go back to the requisite period.

To state that the deed recites "as therein is recited," must, one would think, be presumed by every one to be so perfectly futile, not to say ridiculous an attempt to furnish information, that one cannot but wonder how it came in practice to be very frequently the only intimation which an abstract promulgates of there being any recitals at all.

And when the deed is made in pursuance of a power, or in the execution of a trust, or previous agreement in writing, the recital of such power, or trust, or agreement, should be fully set out, as the validity of the deed may depend upon its conformity to these previous instruments.

Another common omission is the not stating the consideration upon which the deed was founded, for although this is not often material except in a bargain and sale under the statute of uses, yet, as it sometimes is, it should always be expressed; if, for instance, it were for a mere nominal consideration, and the vendor were indebted at the time, the colour of fraud, which such a circumstance would impose upon the transaction, might render the validity of the deed very questionable. The com-

Consideration
of deeds should
be stated.

PURCHASES. mon mode of stating the conveyance to have been made "for the considerations therein mentioned," is, therefore, by no means satisfactory.

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Mode of pay-
ment sometimes
to be stated.

And when the conveyance is made in pursuance of a power or trust, and the consideration money is to be paid to particular persons for specified purposes, the actual mode of payment should also be stated.

Receipt clause
immaterial.

As to the clause acknowledging the receipt of the consideration money, this need not be regarded, unless when it expresses the money to have been paid at a former period, although no conveyance was then executed; for in ordinary cases this clause, as will be shown hereafter, is wholly unimportant.

The object of
the deed to be
stated.

The purpose likewise for which the conveyance is made, as to make a tenant to the præcipe, or the like, if expressed in the deed, should likewise be stated in the abstract, as the true construction of the deed will be aided by a knowledge of the object it was intended to effectuate, for, though informal in some respects, it may be sufficient to answer the ends designed.

By whom the
assurance is
stated to be
executed
should be men-
tioned.

The abstract should likewise mention not only by whom and to whom, but by whose direction or consent (if any) the deeds are stated to have been executed, and how they were attested; circumstances which are often either wholly omitted, or too vaguely noticed to give any distinct information respecting them, although they may in many cases be important to the validity of the assurance.

Operative
words should
be given.

The particular operative or conveying words of every assurance should moreover be always given in the abstract, for these will often give effect to the deed as a valid assurance, although ill adapted to the particular species of conveyance intended by the parties.

Identity of
parcels.

The subject matter (or in law language, the parcels) of the

deed is of course a prominent and leading feature in it. This should therefore be so noticed throughout the abstract, as to be always kept in a clear and insulated view ; and for this purpose it is particularly and in many cases absolutely requisite to state at the head or title of the abstract the particular lands, &c. to which the attention is to be especially directed, as “ An abstract of the title of A. B. to a messuage situated at, &c. and called, &c.” and afterwards to mention those particular lands only, or at least by some emphatical description or notification (*a*). For want of a designation like this, it often happens where the vendor is possessed of other estates than those under consideration holden under the same title, that the conveyancer is left in total ignorance as to the property to which his attention is intended to be applied, and is consequently sometimes rendered incapable of advising otherwise than at random on the particular object which is in the view of the parties ; for it very frequently happens, out of the variety of lands, &c. included in the different assurances professing to form the chain of title, that either by reason of some variation in their description, their being or not being included in a fine or declaration of uses, the uncertainty of their being comprised in a residuary devise, allotments under an enclosure act, or the like, doubts attach upon some of the premises which do not upon others, the consequence of which is that a delay and expense are incurred by inquiries, which by a little previous care might have been avoided (*b*).

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Solicitor.*

The description of lands, &c. is often materially altered by the erections of houses upon them, or by several fields being

Alterations in
parcels to be
noticed.

(*a*) And see 1 Prest. Abstr. 81.

(*b*) See also *post*, p. xxxi.

PURCHASES. thrown into one, or one divided into two or more, and the like; this, when within the knowledge of the vendor's solicitor, should be particularly noticed in the abstract of title, as there will otherwise appear to be a want of identity in the parcels of prior and subsequent deeds, and some satisfactory evidence (as poor rates or land tax assessments, leases, or other cotemporary documents, or, if necessary, an affidavit), should be furnished to verify the fact stated. Where new lands have been acquired, or some of the old lands have been parted with under an enclosure act, they often in this view require the special care of the vendor's solicitor, in order to enable the purchaser's counsel to judge how far the changes which have taken place may have affected the evidence or the validity of the title to the lands in question.

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Words of limitation to be set out.

Next to the parcels, the limitations are the most material parts of a deed or will. In stating these, therefore, the exact and particular words of the limitation should be set out, and not the substance only or what is conceived to be the effect of them, for nothing is often more difficult, particularly in wills, to decide what estate passed by the words of limitation. It is essential, therefore, that every phrase used for creating or conveying an interest should be stated verbatim and without comment. It is very common to find it stated in an abstract that the conveyance or devise was to such a one in "fee simple," in "fee tail," or "for life;" but this precludes all inquiry, and at once decides upon the subject of investigation (1).

(1) Mr. Preston, in his *Essay on Abstracts*, observes (vol. i. p. 116), that "in abstracting words of limitation, marking the duration of the estate, it is very common in practice to give their effect, instead of stating the terms of the deed :

And so also let it always be stated whether the habendum in a deed was simply "to the grantee and his heirs," or "to and to the use of him and his heirs;" a requisite which is very frequently neglected, although the title often depends upon the distinction, particularly where there are posterior uses to prevent dower or for other purposes.

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The words of inheritance or of procreation in limitations, whether by way of remainder, or primarily to first and other sons (and especially in the remainder to daughters where there are any), should be set out verbatim, that the purchaser's counsel may decide upon what estate they respectively took under the events which happened. The reason of my impressing this precaution more emphatically in the case of daughters is, that in the limitation to them, I have very frequently

Words of inheritance, &c.

thus, "to A for life, remainder to B in tail, remainder to the daughters of A in tail, with cross remainders between them in tail, with remainder to A in fee."

"Nor is there any decisive objection (he adds) against this practice, when the construction and consequent effects of a deed are so clear and indisputable that no doubt can exist on the effect. But when a deed or will is abstracted in this mode, it is particularly incumbent on the solicitor for the purchaser to take care that the effect of the limitation is correctly given in the abstract. And it is always more satisfactory to the conveyancer to have the words of the limitation that he may judge of their operation, and draw the conclusion himself."

Had that gentleman said that there *was* a "decisive objection," "and that it was essential," &c. instead of "more satisfactory," to the conveyancer, I should more cordially have acceded to the propriety of his observations, for I cannot allow that it should, in any case, be left to the solicitor to decide upon the effect of the limitation being correctly stated in the abstract, but conceive it to be essentially important that this should, in every case, be left *exclusively* to the purchaser's counsel, without any discretionary judgment to be exercised by the vendor's solicitor, for although there are unquestionably many solicitors of very considerable legal knowledge, who might seldom err in their conclusions, yet there are many others, as has been elsewhere remarked, who cannot have possessed opportunities of acquiring a competent knowledge for this purpose.

INTRODUCTION.

It is a very common error to suppose that the words of limitation have, by some strange necessity, or misapprehension, been omitted in the assurance. Hence, although trustees intended to make a fee, they have in fact taken no more than a life estate.

It is not necessary to set out the prior estate, should also be set out, and not those only which are supposed to have taken effect, with the addition, as is usually done, of "divers remainders over;" for although the more scientific way is as Mr. Preston has observed to give "such limitations only as are material to the title without setting out the others," unless where the title may be aided under some of the more remote limitations, or it depends on them by reason of the failure of the prior estates or limitations (1); yet who is to decide but the purchaser's counsel in what cases limitations are material to the title; or when the title may be aided by such limitations and when not, or whether the prior estates have or have not in point of law failed, and are incapable of taking effect? And the very words by which the remainders are created should be given, that it may be seen whether they are vested or contingent, or springing, or shifting uses. The ultimate remainder, or reversion, is moreover frequently of great importance to be known, in order to

(1) See 1 Ess. on Abstract, 122.

The work here referred to is replete with practical suggestions of the most valuable kind to the conveyancer, and where any of those here offered appear to be discordant from them, as in the instance adduced above, they will generally be found to arise more from the different impressions necessarily generated by the particular occurrences which have taken place within the observations of different practitioners, as to the expediency of more or less caution to be used by the solicitor in the performance of particular parts of his professional duties, than from any general or essential variance of opinion.

ascertain whether it has been barred, or whether let in by the fine or other means used to destroy it. So the limitations inserted in settlements or wills to trustees to support contingent remainders should be set out in the words of the limitation, at least so far as to show what estate they took, and not noticed as is usually done in the way of "with remainder to trustees to support contingent remainders;" for the purchaser's counsel has a right and will expect to see whether the estate limited to the trustees was such as would support the subsequent estates or not, and also whether or not they took a greater estate than was necessary for that purpose.

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Vendor's
Solicitor.*

So of the re-
version.

Where a deed contains a power to appoint or direct an use, an authority or trust to sell or convey with the consent of certain persons, or on the happening of certain events, or with certain prescribed ceremonies, or the like; such powers, &c. if they have been or are about to be exercised, should be set out verbatim, as the validity of the title derived under them rests essentially upon the mode and under the circumstances of their execution.

Powers and
trusts for sale
to be stated
verbatim.

And where the power or trust is to sell, the clause exonerating the purchaser from seeing to the application of the purchase money by declaring the receipt of the trustee to be a discharge, should, where there is such a clause, be given fully; and where there is not, the manner in which it is directed to be applied should be set out in like manner.

And although a deed or will depends on a power by which preceding uses have been defeated, yet it appears to me to be preferable, that they should be stated, and not so many of them only as may, in the opinion of the solicitor, show the right to exercise the power; or in cases only where the sale or appointment under the power has been questioned, or its validity

PURCHASES. is doubtful (a); for the judgment of the solicitor may, without

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at all impeaching his professional skill in the proper department of his profession, be fairly questioned on legal points to which his reflections cannot have been directed otherwise than in a very limited and general manner.

Other trusts, &c. to be stated. And it is the same of all other powers, trusts, or directions as those for sale, exchange, change of trustees, &c. &c. which have been or are going to be performed, as the validity of the act frequently depends upon its being done agreeably to the mode prescribed; but where they neither have, nor are now in contemplation to be performed, they are of course immaterial to the title, and it will be sufficient merely to state that there are such.

Similar observations, as to the expediency of setting out powers, &c. may be applied to conditions and provisoes in a deed inserted for the purpose of defeating or qualifying an estate, "that it may appear in what degree and to what extent they may operate, and upon what terms and by what mode they may be discharged or avoided; and if they have been performed, the material circumstances should also be stated, that an opinion may be formed whether the condition has been discharged (b)."

Creation and cesser of terms to be stated. And so in abstracting a deed, by which a term is or is supposed to have been created, the time or event at or upon which it was to commence, and the clause of cesser, or other direction as to its ultimate destination after performance of the trusts or purposes for which it was raised, should always be fully set out, for want of which it cannot be ascertained whether the

(a) See 1 Essay on Abstracts, 119.

(b) See 1 Prest. Abstr. 148. *aliter*.

term is still subsisting or not, or indeed whether it ever **PURCHASES.** arose; the common way is to say no more than that the term was created "upon or for certain trusts and purposes which have been long since fully performed or otherwise satisfied;" but this is begging the question to be decided. The trusts and purposes of the term, together with the events upon which it was to commence, or not to arise, or determine, should therefore be explicitly stated, and the happening of the events, if past, averred, with accompanying proofs in support of the allegation, notwithstanding that they may be supposed never to have arisen; for whether they are now in being or capable of arising or not, it is for the purchaser's counsel to be satisfied of, which he cannot be without being informed as well of their nature and purpose as all circumstances attending them.

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Solicitor.*

The heads or purport of all the covenants, for title, &c. **All covenants, &c. should be enumerated.** contained in each deed, should likewise be given in the abstract; it being stated (in the usual way) to contain the usual covenants is by no means satisfactory, unless, indeed, in a common purchase deed, as it is well known that questions as to what are or are not usual covenants (particularly in leases, as will be further noticed by and by) have produced much discussion, and even a contrariety of determinations. And where the form of such covenants as are acknowledged to be usual at all differs from the language in which they are commonly framed (as by the covenant of seizin not commencing with the usual phrase of "for and notwithstanding," the covenant for quiet enjoyment being extended to the acts of "all persons whatsoever," instead of being confined to those of the vendor and his ancestors, or the like); such difference should be noticed, that the conveyancer may judge of its legal consequences, the circumstances of a covenant's being qualified or unqualified,

PURCHASES. referring or not referring to existing incumbrances, &c. being often material to the title; and if any of the covenants are such as by subjecting the purchaser to the performance of them, restrain his exercise of a full and complete dominion over the estate, they must be especially noticed, that the importance of them may be considered by the purchaser's counsel.

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**Exceptions in
covenants
to be noticed.**

All exceptions, if any, made at the end of the covenant for quiet enjoyment, should also be mentioned, of however trivial a nature they may seem to be, as a right of way, of fishing, of sporting, or the like; for although they may be looked upon as matters of no moment by one person, great importance may be attached to them by another. And where the exception is of any actual incumbrances, or outstanding interests, it is of course material that it should be particularly noticed.

**With whom
entered into.**

And it should likewise be mentioned (although seldom done), with whom the covenants are entered into, that it may be seen whether the covenantor had such a seizin as would carry them with the land and give the intended purchaser the benefit of them.

**Notice covenant
to produce
deeds.**

If there be a covenant for production of title deeds, it should be expressly so stated, that the purchaser's counsel may know what deeds are to accompany the title. And for this purpose the schedule, if any, should be copied verbatim.

**Mode of exe-
cution and at-
testation should
be stated.**

It is very common in the abstract of a deed, to state summarily, that it was "duly executed and attested;" but is not this determining upon the question to be decided? It should be stated by whom in particular it was executed, and how in particular such execution was attested, that the purchaser's counsel may be enabled to judge whether it was executed by all the necessary parties or in the proper form or not.

The form of the execution and attestation of deeds, in exercise

of powers for instance, are amongst others of the very essence of the assurance; and any omission or other inaccuracy in them, often gives rise to questions of considerable doubt, as well as of importance. The particular mode of the execution and the exact words of the attestation should therefore, in these cases, be set out, as the want of this, or any remission of care on the part of the purchaser's solicitor, in examining the abstract with the deeds, may be attended with fatal consequences to his client. And the declaration in the body of the deed itself, that it was executed and attested in the manner prescribed by the power, avails nothing, as it is apparent that, at the time when this declaration was made, no execution of any kind had taken place.

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If the deed were for a valuable consideration paid, and be of a recent date, as twenty or thirty years, it should be stated whether or not a receipt be indorsed, and by whom subscribed, as it may be material to consider whether or not it be such as satisfactorily to exonerate the lands in the hands of a purchaser from the equitable lien which it would be upon them if not paid, and the want of such receipt would induce a presumption of its not having been paid. The amount of the sum mentioned in the receipt should also be stated, that it may appear whether it is the same as that mentioned in the body of the deed, and no presumption of fraud be induced by a nominal, or no consideration being actually paid, whilst the conveyance be expressed to be made for a valuable and sufficient one.

Receipt for
consideration
should be
noticed.

This remark applies, however, it is to be observed, only where it was intended that the purchase money should be a full and sufficient consideration, for where it is nominal only, as 5s. (even though necessary to support the assurance, as in a bargain and sale to be enrolled), the acknowledgment of the re-

PURCHASES. ceipt of it in the body of the deed is held to be sufficient evidence of the payment (a).

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Ulterior acts to
perfect the
assurance to be
noticed.

Lastly, all ulterior acts, *i. e.* acts performed after the execution of the deeds, as delivery of seisin, registry, or enrolment, if any, must be stated to have been performed, and also the time and place, as the deed will have its full or only a partial or perhaps no operation, according to one or other of these circumstances.

Directions for
abstracting
of particular in-
struments.

The preceding observations, it will be perceived, are relevant only or principally to the abstracting of *deeds*; but a title will often be found to be composed in great part of various other assurances and documents, as fines, recoveries, chancery proceedings, commissions of bankruptcy, &c. and as these have, in some respects, a peculiar operation, depending either upon their own natures or the force given them by particular acts of parliament, and as it is material to abstract those parts of every assurance in which its efficacy subsists, it will be proper to subjoin some additional remarks relative to the abstracting of those kind of assurances.

Fines.

In abstracting a fine, it should be stated, in addition to the term of which it was levied, who were the plaintiffs or cognisees, and who the cognisors or defendants; and likewise the species of fine, as whether *sur conusance de droit come ceo*, *sur conusance de droit tantum*, or the like, in order that it may be seen to have been such kind of fine, and levied by such parties as the case required. So also, the quantity of land, &c. and the parish and county where situated should be set out, to show that the fine was

(a) 10 Co. 67. b.

actually of the very lands in question, and situated in a place over which the court had jurisdiction. And if the object of the fine was to bar an estate tail, or to confer a title by non-claim, it should be stated whether proclamations are indorsed on the indentures, and also the times at which they were made, in order to show whether it were in conformity to the statute of Hen. VII. Indeed this should be done for whatever purpose the fine was levied, as it is frequently necessary to consider the fine with reference to that statute, although it was not in the contemplation of the parties. A common way of noticing a fine (after mentioning that a covenant was entered into for levying it by certain parties) is to state that of such a term "a fine was levied accordingly;" but this is evidently too indefinite a mode to enable a conveyancer to form any correct notion as to its due formality.

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In abstracting the exemplification of a common recovery, besides the term of which it was levied, it should be stated whether there was a demandant and a tenant to the precipe, and who in particular were the vouchees, the order and form of the vouchers, and whether there was a voucher over of the common vouchee. This latter circumstance is seldom attended to; but as the supposed recovery in value by the tenant in tail, in lieu of the estate recovered from him, is the gist of the bar, and this recovery cannot be presumed to be had but from the person whom he vouches over to warranty, it is, in point of form, an essential part of the assurance. The parcels, with their situations, as to parish and county, are of course material to be stated, and the return and execution of the writ of precipe should also be mentioned, that it may appear at what time the recovery was perfected, and whether the freehold was then in the tenant.

Recoveries.

With respect to wills, I can scarcely allow of their being abstracted at all, and recommend that in every case where it is

Wills.

PURCHASES. not a will in strict settlement, or otherwise framed in the same artificial manner as a deed, a copy instead of an abstract be given of it, for the only safe way of construing a will, or even what may be considered a detached part or insulated devise or bequest, when framed by the testator himself, or any other person not thoroughly conversant with the import of technical phrases, is, to consider it in the *whole*, as the intention of the testator is often discovered by other parts of the will rather than by the particular devising clause itself (1).

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Solicitor.*

Copies should
be delivered of
wills.

(1) The rule I here recommend of giving a copy instead of an abstract of wills, I think so material to be adopted in practice, that, in order to enforce it, I transcribe a passage which I have discovered in the treatise I have already referred to by Mr. Preston, by which, although the same plan is not advised in terms, it will be seen that the requisite information to be contained in the abstract of a will cannot be furnished by any other mode. "The points to be attended to," he observes, "are to show, to whom the lands are devised; the words used in description of lands; the words of limitation by which the estate is devised; the power, if any, in pursuance of which the devise is made; the words of modification, or of severance of the tenancy, if there be any; the words of qualification which may abridge or defeat the estate; the uses and trusts, if any are created; the conditions, or conditional limitations by way of executory devise, or otherwise, annexed to the devise or appointment; the charges imposed on the devisee; the indemnity, if any, against seeing to the application of the purchase-money, or mortgage-money; such powers, if any, as are material to the title; and when leasehold lands are the subject of the title, the appointment of executors. And in abstracting each of these clauses, there should be a close adherence to the language of the will, so that a correct opinion may be formed of its construction; and the context should always appear, as far as it may, in any manner, influence the construction, by explaining, enlarging, abridging, or in any other manner affecting the genuine import of the words on which the title more immediately depends. And it is more proper to be diffuse in giving the language of a will, especially one not prepared in technical language, than to attempt to reduce the abstract into a narrower compass, and thus withholding information which may be material. Indeed, in abstracting wills, it is, from the inaccuracy with which they are frequently prepared, and the want of the regular form which is observed in deeds, of the first importance to add all limitations over, and all clauses which can affect the context, or vary the construction. How often does it happen, that, in wills, words which import an estate in fee simple are, by subsequent expressions, and especially by words of limitation over, qualified into

The parcels, so far as concerns their identity with those in PURCHASES, the preceding evidences of title, are often lost sight of by being comprised in a general devise of all the testator's lands in such a county; in a residuary devise, after a devise of particular parts of his estates by name, or the like: when this is the case, abstracts should be given of counterparts of leases granted by the testator, copies of poors' rates or land tax assessments, or some other testimony of the lands in question having been in the possession of the testator at the date of his will, and if it can be done, at the time also of his decease; for which purpose the time of the testator's decease should likewise be stated; and when the subject of the title is leaseholds (as will be more particularly noticed hereafter), an extract should be given of the testatum annexed to the probate copy of the will; and if the will be of freehold estates, the mode of execution and attestation must also be particularly mentioned, in order to ascertain whether the statutes of wills have been conformed to.

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Solicitor.*

The time and place where the will was registered, if the lands be situated in a register county, whether they be of a freehold or chattel nature, are likewise, with reference to subsequent assurances of the same lands, in general circumstances material to be stated.

Where the title is derived from or through a bankrupt, after abstracting the proceedings under a commission in the usual way of abstracting other instruments of assurance, a statement

Bankrupt proceedings.

an estate tail, or into a fee determinable by executory devise. And again, words which under the rule in Shelley's case import to create an estate tail, are, from other expressions in the will, expounded to give the property to the heir or heirs of the body as purchasers. Variations of this sort are almost infinite. Hence the importance that every clause which can influence the construction should be abstracted. In numerous instances, the opinions which counsel give on an abstract are very different from the opinions they would have given on a perusal of a full copy or extract of the will." See 1 Prest. Abstr. 180.

PURCHASES. should be subjoined (if the title relate to freehold or copyhold lands) of the day on which the bargain and sale was enrolled, as the operation of the bargain and sale is not from, or by reference to the time of the execution of the deed (as in common cases), but from the time of enrolment ; the statutes transferring no estate to the commissioners, but only a power of disposition under prescribed forms, till which are complied with nothing passes.

*Duty of
Vendor's
Solicitor.*

The day upon which the act of bankruptcy was committed should also be stated, for the statutes vest the estate of the bankrupt in the commissioners, or rather the power of the commissioners over his estate (in cases not within the 46 *George III. c. 135.*), relates to the time of the bankruptcy committed, and not from the date of the commission or time of what is called striking the docket ; and it is the same as to the title of the assignees, which also relates to the time of the commission of the act of bankruptcy ; the title of a purchaser will therefore depend upon whether the conveyance to him was before or subsequently to the time of the bankruptcy ; so the title of a bankrupt's wife to dower will depend upon whether the act of bankruptcy was committed previously or subsequently to the time of his marriage ; for if the bankruptcy were prior to the marriage, this, by removing the seisin from her husband, would prevent her title to dower attaching.

The time when the bargain and sale to the assignees was enrolled is also often material to be stated, as if this was not done until after the death of the assignees, the bargain and sale would, according to the better opinion, have no operation ; for although no time is limited by the statutes for enrolment of bargains and sales by the commissioners, except where it is for barring an estate tail ; yet as the enrolment is essential to the validity of

the deed, it should seem that it must be done in the lifetime of the parties to take under it, as they cannot take under a deed which has no operation until after their decease. In cases, however, within the provisions of 46 Geo. III. c. 135, s. 1. (explained by 49 Geo. III. c. 121), i. e. in cases where the contract for sale, or other transaction with a bankrupt, made more than two calendar months before the date of the commission, by any person not having notice of any prior act of bankruptcy or the insolvency of the bankrupt, a sale by such bankrupt will be good, notwithstanding such previous bankruptcy or state of insolvency.

*Duty of
Vendor's
Solicitor.*

In speaking of acts of parliament, I must be understood to mean private acts operating as conveyances; and considered in that point of view, they are to be abstracted (except in a few particulars) in the same manner as deeds. These acts are generally for the purpose of making inclosures, exchanges, leases, jointures, or barring such entails as by reason of some want of sufficient powers in marriage settlements, or disabilities arising from infancy, &c. cannot be effected without the aid of parliament.

Acts of parliament.

In abstracting inclosure acts (unless it be the general act of 41 Geo. III. c. 109. which being contained in the statutes at large, need only be referred to), the chief thing to be particularly attended to is the provision, if any, and if not, the want of the provision, usually inserted, to give to the lands allotted to the vendor, or taken in exchange by him, his ancestors, or predecessor, the same qualities as to title, and make it subject to the same charges, &c. which the land, in lieu of which they were allotted to him (either primarily or in exchange), possessed or were subject to at the time of the award of the commissioners; and also giving a will previously made, the same force over the

Inclosure acts.

PURCHASES. newly acquired lands, without republication, as it had over the lands expressly comprised in it; such proviso must therefore be fully set out, or its omission noticed.

*Duty of
Vendor's
Solicitor.*

Time of royal
assent should be
mentioned.

The day when the act (whether for enclosure or other purpose) received the royal assent should also be mentioned, as that is the time from which its operation commences, unless some other time be mentioned in the act itself.

Saving clause
should be fully
stated.

Every private act contains a clause, saving or preserving from its operation the rights of all such persons whose interests are not intended to be precluded by it: this clause should of course be fully stated, that the force and exact extent of the act in relation to the estate in question, and the parties interested in it, may be clearly perceived.

But the better way in all cases of a title derived through a private act of parliament, is to deliver with the abstract a printed copy of the act itself, which there can seldom be any difficulty in procuring.

Certificates of
births, deaths,
&c. to accom-
pany the ab-
stract.

The abstract, besides containing the substance, &c. of the title deeds, in the mode above suggested, should also contain statements of such births, deaths, survivorships, and other intermediate facts and events, as in any way relate to the deduction of title, or have a tendency to show the exact state of the vendor's interest; together with certificates or other admissible documents, and evidences in verification of them; and where there is a probability of any of these evidences requiring a length of time to procure, they should be sought for at the earliest period, as well to prevent the inconvenience of delay in the completion of the sale, as also, in some cases, with a view to costs, in the event of its being necessary for the vendor to seek for a specific performance of the contract by the purchaser; for the question of costs often depends not simply upon whether,

but at what time a good title could be made by the vendor; and hence it is better that these, if they can be obtained in time, should accompany the abstract submitted to the counsel of the vendor.

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*Duty of
Vendor's
Solicitor.*

The evidences admissible in the courts, and hence considered satisfactory proofs of the events here alluded to, are,

What evidence
of collateral
facts.

Of the facts of marriages, births, or deaths,—a certificate under the hand of the officiating minister, for the time being, of the parish, or extract from the register book, with an affidavit of its authenticity.

Of legitimacy of a child,—certificate of the marriage of the parents, and proof of their respectively being of age at the time (or consent of parents or of guardians appointed by the trustees in the court of chancery, or of that court itself, if under age.)

Of failure of issue, or there being certain issue only,—an affidavit by some person acquainted with the family.

Of executorship, or of administratorship,—probate of the will of the testator, or letters of administration under the seal of the proper ecclesiastical court.

Of intestacy,—letters of administration under the seal of the prerogative court (1).

Of descents, a pedigree verified by satisfactory evidence,—but as to what evidence is to be deemed satisfactory for this purpose, it can only be observed generally, that it must be such as it is conceived a jury of honourable men would give credit to, and, on a writ of right, consider as amounting to a moral

(1) More particular observations on these species of evidence to support the above and other facts occurring in the deduction of titles, will be made when treating of the duties of the solicitor for the purchaser, see post.

PURCHASES. certainty of the facts being as stated; amongst these may be reckoned certificates of marriage, entries in family bibles, or engravings on tomb-stones, and above all long undisturbed possession (*a*), in a line corresponding with such pedigree, and in failure of them, an affidavit of some person connected or long intimately acquainted with the family; and these evidences should be furnished, notwithstanding the purchaser himself (*b*) may be well satisfied of the fact, for although it may be known to him, it may not, and probably will not, to a future purchaser from him. And in order to show that a person is heir to the ancestor, it is further necessary that evidence should be produced of the decease of such ancestor or each successive ancestor, either wholly intestate, or intestate as to the particular lands in question; the latter fact may be proved by a production of the will of such ancestor, or of his trustee, if any; and if it be alleged that each intermediate owner or trustee died intestate, then letters of administration should be produced; or if it be asserted that there were not any letters of administration, by reason of the party having no property, "search should be made for a will in the ecclesiastical courts of the several ordinaries to whom the right of granting the administration of the assets, if any, would have belonged, namely, the prerogative court, the court of the diocesan, and of the archdeacon, or other person having local or peculiar jurisdiction (*c*)."

Of identity of parcels, or proof of possession,—counterparts of

(*a*) And see 2 Prest. Abstr. 422.

(*b*) See 2 Prest. Abstr. 421, *contra*.

(*c*) See 2 Prest. Abstr. 452. et seq.

leases, land tax or poor rate assessments, terriers, plans of surveys, and the like. PURCHASES.

And if the above evidences cannot be obtained in time to accompany the abstract to the vendor's counsel, every diligence should be used that they may accompany that which is to be delivered to the purchaser's solicitor, as by this much time and expense will probably be saved.

*Duty of
Vendor's
Solicitor.*

The last thing which it at present occurs to me to mention by way of suggestion to the vendor's solicitor on the subject of the abstract of his client's title is, that he should recollect to subjoin a statement of whether or not the vendor be married, and if he be, whether his wife be dowable out of the lands contracted to be sold, and if not, to furnish an abstract to the purchaser's solicitor of the settlement or other instrument by which her title is supposed to have been barred, that he may be enabled to judge of its efficacy for this purpose. The abstract should likewise be accompanied by statements of all such matters relative to the legal characters and situations of the several parties (if any) who are interested in the estate, as do not appear upon the face of the abstract, in order that the counsel of the purchaser may be enabled to advise with precision on every thing connected with the title, and point out the mode of assurance to the purchaser without the necessity of calling for further information; and in doing which let him always bear in mind that it will be much better to err on the side of superabundance, and insert what may happen to be superfluous, than to omit what may possibly be essential.

Statements at
foot of abstract.

The abstract being prepared in conformity to the hints I have suggested, it will be the duty of the vendor's solicitor to deliver

Abstract to be
delivered to
purchaser's
solicitor.

PURCHASES.

*Duty of
Vendor's
Solicitor.*

a fair copy of it to the solicitor for the purchaser, which should if possible be done upon or before the day stipulated for that purpose in the agreement, if any, between the parties; for otherwise the purchaser may at law avoid the contract (a); and the vendor can have no relief in equity unless under some circumstances of neglect on the part of the purchaser in calling for the abstract (b), or of insuperable difficulties, on the part of the vendor, after using all due diligence in endeavouring to furnish it by the time appointed (c). And if no time be appointed for delivery of the abstract, it must be done in a reasonable time after the contract has been entered into, i. e. without any delay beyond what unavoidable circumstances imposed; and the delivery of the title deeds themselves, it may be observed, is not equivalent to the delivery of an abstract, as the purchaser or his solicitor is not obliged to take upon himself the responsibility of guarding the vendor's title deeds; nor indeed can the deeds alone, in many cases, show the precise state of the title, as the proof of deaths, marriages, &c. &c. will frequently be necessary to accompany the abstract for that purpose; and if an abstract be refused on being demanded, delivery may be enforced by bill in equity.

2dly, Of the duty of the Vendor's solicitor, from the delivery of the abstract to the approval or rejection of the title.

On delivery of abstract title deeds must be produced to compare with abstract.

The solicitor for the vendor, upon delivering the abstract, must

(a) See *Berry v. Young*, 2 Esp. Ca. 640. 4.

(b) *Guest v. Homfrey*, 5 Ves. 818.

(c) See *Lloyd v. Collett*, 4 Ves. 689. *Paine v. Meller*, 6 ib. 349. and *Radcliffe v. Warrington*, 13 Ves. 323.

be prepared to produce the deeds themselves to the purchaser's solicitor, if in his custody or power, in order to enable him to ascertain whether they are abstracted with fidelity; and if they are not in his custody, but liable to his inspection under a covenant for their production, he must at the expense of the vendor (including that of journeys, if requisite, to the place where they are deposited (a)), cause them to be produced for that purpose; and if he neither have the deeds nor is entitled to call for the production of them, he must furnish attested copies of them (even though instruments on record) for the purpose of their being examined with the abstract.

PURCHASES.

*Duty of
Vendor's
Solicitor.*

On an agreement for the purchase of an estate, it is not unusual for the purchaser to be required to pay down a part of the purchase money by way of deposit, which if the purchase go off for want of title, is to be returned to the purchaser with interest, in the mean time. The risk of which in such case belongs to the vendor whilst it remains in his custody (b), unless it be invested upon some security expressly approved of by the purchaser. Where, therefore, a deposit has been paid, the vendor's solicitor, if he find any considerable delay is likely to take place in making out the title, should apply to the solicitor of the purchaser to obtain a written consent for its being invested in some particular funds, to be mutually agreed upon between them (c).

Deposit money
should be
invested.

And should the vendor's solicitor not have been able to produce a perfect title by the time appointed for the completion of the purchase, and he should receive notice from the pur-

As to notice
of purchase
money being
unproductive.

(a) *Sharp v. Page*, cited Sugd., Vend. and Pur. 351.

(b) *Roberts v. Massey*, 13 Ves. 561. *Ackland v. Gainsford*, 2 Mad.

(c) See Sug. on Vend. and Purch. 39.

PURCHASER. chaser that his money is ready and unproductive, in this case also he should endeavour to agree with the purchaser's solicitor for its investment.

*Duty of
Vendor's
Solicitor.*

If title approved,
conveyance to
be drawn.

If the title be approved by the purchaser, the next step towards completing the transaction is, preparing the drafts of the different conveyances and assurances to the purchaser, some of which, by established practice, are to be prepared by the vendor's solicitor, and some by the solicitor for the purchaser.

What as-
surances to
be prepared by
the vendor.

The assurances to be prepared by the vendor's solicitor are, deeds of covenant for the production of title deeds retained by him (which, unless the purchaser should require separate covenants relative to particular assurances, must be borne by himself), deeds necessary to exonerate or protect the estate from subsisting incumbrances, and assignments of outstanding terms not already attendant upon the inheritance by express assignment, all which it will belong to the vendor's solicitor to engross and tender for execution, unless it be otherwise agreed between the parties.

And as to the covenant for the production of deeds not delivered to the purchaser, if it be prepared by the purchaser's solicitor, the solicitor for the vendor must see that it contain a proviso vacating the covenant on the vendor's procuring a similar covenant from any future purchaser to whom they may be delivered; for without such a proviso he will still be personally liable for their production, although they may be wholly out of his power. On a vendor's selling the larger part of his estates (if he deliver the title deeds over), his solicitor should also obtain from the purchaser a covenant for their production, in order to enable himself to procure them to be produced to a purchaser of that part of the estate which may remain in his hands.

But the conveyance of the purchase deed itself is to be prepared, as we shall see hereafter, by the purchaser's solicitor, except the purchaser neglect to complete his purchase upon a good title being deduced, and there is no agreement subsisting as to who shall prepare the conveyance; in which case the vendor's solicitor must, it appears, tender to the purchaser a conveyance prepared, executed, and attested in the usual form (a), as he cannot till then maintain an action for the deposit money, if any were paid, or for damages, nor sustain a suit for specific performance of the contract. But where the purchaser's solicitor is, by express agreement, to prepare the conveyance, it will not be necessary for these purposes that it should be prepared or tendered by the solicitor of the vendor (b).

PURCHASER.

*Duty of
Vendor's
Solicitor.*

Fines also and recoveries, if necessary to vest a clear estate in the vendor, must also be levied and suffered at his expense, as all that can be required of a purchaser is to take, at his own expense, a conveyance of a clear and marketable estate from the vendor or his trustee, to himself or trustee (c). Where, therefore, the expenses of the conveyance are increased by mortgage or other outstanding interests being assigned or released to the purchaser, or a trustee for him; by the purchase deed itself, which is sometimes done, or where the covenant by the vendor for the production of deeds not delivered over to the purchaser is inserted in the conveyance, the expense is to be apportioned between the parties accordingly.

Fines and recoveries.

Attested copies of all deeds, unless they be of record, and office copies of all devises relating to the hereditaments sold,

Attested copies.

(a) And see Sug. Vend. and Pur. 181. n. c. (b) Hawkins v. Kemp, 3 East, 410.

(c) See 2 Ves. jun. 155.

PURCHASER must be made and delivered to the purchaser at the vendor's expense, and that duly stamped as required by act of parliament, in order that they may be admissible as evidence in case of the original being lost (a).

*Duty of
Vendor's
Solicitor.*

But the purchaser being entitled to attested copies of such deeds only as are not of record, it may be proper that I should apprise the vendor's solicitor what deeds are considered to be of record, and what not.

What deeds are
of record.

Deeds are said to be of record when a transcript has been made of them by the officers of a court of record, "for the purpose of being a perpetual memorial and testimony (b)." There is a difference, however, when such deeds are enrolled in pursuance of an act of parliament, and when by the voluntary act of the party; for where they are enrolled by the party for safe custody only, they will be evidence against the party acknowledging them only, and those claiming under him, and not (as in the other case) against others likewise (c).

What courts are
of record.

Courts of record are the High Court of Parliament, the Courts of King's Bench and Common Pleas at Westminster, the law sides of the Court of Chancery and Exchequer, the Court Leet, the Court of Hustings in the city of London, and the Court of Great Sessions in Wales. Attested copies of deeds enrolled in any of which Courts cannot, therefore, in any case, be required, where the enrolment was made under a statutable requisition, nor in other cases where the deeds in question are necessary only for the purpose of supporting the purchaser's title against the party by whom they were acknowledged, or

(a) And see 6 Ves. 460. Boughton v. Jewell, 15 ib. 176.

(b) 3 Blac. Com. 24. Finch, L. 231.

(c) See Holcroft v. Smith, Freem. 259. Gilb. Ev. 86.

some person claiming under him ; except only for the purpose of comparing them with the abstract, where the deeds themselves are not in the vendor's possession.

PURCHASES.

*Duty of
Vendor's
Solicitor.*

But neither the Prerogative Court of the Archbishop of Canterbury, nor any other ecclesiastical court, are courts of record (a); nor are courts baron incident to manors (whether freehold or customary), nor the court of hundred, the sheriff's county court, nor the courts appertaining to the counties palatine of Chester, Lancaster, and Durham, or franchise of Ely (b). Hence of wills, or other instruments registered in these courts, attested copies, i. e. copies extracted from the books of registry, and attested by the proper officer as true, may be required at the vendor's expense; unless it were otherwise agreed at the time of the contract.

What courts are
not of record.

The vendor's solicitor must also, as has been before intimated, procure from the vendor, at the vendor's expense, a covenant for the production of the originals of all deeds relating to the premises, and not delivered over at the execution of the conveyance, whether such production be necessary to substantiate the purchaser's possession, or to examine by them attested copies which may afterwards be required, the purchaser from time to time defraying the expense of the production (c): the principle upon which he may be required to give this covenant at his own expense is, that if he do not deliver to the purchaser the best evidence of title, i. e. the assurances themselves (which the purchaser has *prima facie* a right to), he must furnish the next best evidence, which attested copies alone are not, they being evidence to support the purchaser's title as

Vendor to co-
venant for pro-
duction of deeds
not delivered.

(a) 3 Bla. Com. 67.

(b) See 4 Inst. 213, 218. Finch, R. 452.

(c) See *Berry v. Young*, 2 Esp. c. 640.

PURCHASES. against the vendor only, and those claiming under him, and not as against other persons, unless in cases where the originals are lost or withheld.

*Duty of
Vendor's
Solicitor.*

On rejection of the title abstract to be returned.

Should the title be finally rejected by the purchaser for defect of title, the solicitor of the vendor should without delay require the abstract to be returned, together also with the opinion of the purchaser's counsel upon the title (a); for it might be very prejudicial to the vendor to have the evidence of his title and the objections of counsel in the hands of third persons. The vendor must also, through his solicitor, repay to the purchaser's solicitor all reasonable expenses he may have been at in investigating the title (b).

On execution of the assurances.

3dly, Of the duty of the vendor's solicitor on the execution of the assurances.

Having in the two preceding sections stated what belongs to the solicitor for the vendor to attend to from the time of the commencement of the contract till the engrossment of the conveyance, I proceed, thirdly, to notice what will more particularly require his attention at and after the time of the execution of such conveyance.

Vendor's solicitor to attend to execution.

The only thing which it belongs to the solicitor for the vendor to do upon this occasion is, to attend to his execution of the assurances and his signature to the receipt for the consideration money in the accustomed form; but this latter will often require his particular attention; for it frequently

(a) See 2 Taunt. 270. 277.

(b) See *Fleureau v. Thornhill*, 2 Blac. Ves. 1078. *Turner v. Beaurain*, cited Sugd. Vend. and Pur. 177. *Brett v. Ellis*, ib. App. No. 7.

happens that it is not convenient for the purchaser to pay **PURCHASER.** the whole of the purchase money on the day of the execution of the deed, and the vendor is willing, on the faith of some personal security, to give some indulgence for payment of the remainder. In this case the vendor is to be cautioned against signing a receipt for the whole of the money, unless he is most perfectly satisfied with the ampleness of the security offered him for the remainder; for such receipt will be at least *prima facie* evidence, and, according to some authorities (a), conclusive evidence of the whole having been paid; and although this evidence should be considered as rebutted by the contrary admission of the purchaser, as furnished by the collateral security given for the residue of the money; yet, without some care, there will be danger of the estate being by such security exonerated from the lien which the vendor would otherwise have upon it for the sum remaining unpaid; where, therefore, a security is taken for any part of the purchase money, the receipt must be so framed as to prevent the possibility of that effect, and may be thus :

*Duty of
Vendor's
Solicitor.*

“ Received, the day and year above written, of the within named (*purchaser*), the sum of £ , part of the purchase money, or sum of £ , within mentioned, to be paid by him to me, and also a promissory note of even date herewith, under the hand of the within named (*purchaser*), for the payment of the residue of the said purchase money, on the day of now next ensuing ; but which said note it is expressly understood, and is hereby declared, shall be without prejudice to the lien of the within named (*vendor*), upon the

Receipt where
part only of
purchase money
paid.

(a) See Co. Lit. 373. *Browntree v. Jacob*, 2 Taun. Rep. 141.

PURCHASER. within mentioned hereditaments, for such remaining sum of
£ .”

*Duty of
Vendor's
Solicitor.*

This receipt and declaration should be signed by the purchaser as well as the vendor; and although it be delivered over into the hands of the purchaser, yet, as he must produce the deed if he would resist the vendor's claim upon the premises, such production would necessarily (unless fraud be practised) preclude his defence. If, however, the sum remaining unpaid be a considerable portion of the purchase money, it would not be prudent to rely upon the receipt alone; but in such case, either a bond reciting the facts should be executed to the vendor (8), or the deed should be delivered to the vendor's solicitor (or other third person), as an escrow, and remain in his hands until the money be paid.

The mode for delivering a deed as an escrow may be thus :

*Delivery as an
escrow.*

“ I deliver this, as my act and deed, as an escrow, unto A. B. of, &c. to be delivered over by him unto the within named (*purchaser*) his heirs, or assigns, upon payment by him to me of the sum of £ being the sum remaining unpaid of the within mentioned consideration money of .”

The attestation should be in a correspondent form, as

*Attestation on
escrow delivery.*

Sealed by the within named (*vendor*), and by him delivered to A. B. of, &c. to be by him delivered over unto the within named (*purchaser*) his heirs, or assigns, on payment to me by him of the sum of £ being the sum remaining unpaid of the within mentioned consideration money of £ .

Having noticed in the preceding remarks all that occurred to me as belonging to the solicitor of the vendor to do, from

(8) See the form of such bond, 1 Wilde's SUR. vocc, “ Bonds.”

the time of the inception of the contract for sale, until the PURCHASES.
rejection of the title by the purchaser, or his approval, and the
engrossment and execution of the deeds of conveyance; I will
now endeavour to point out what, during the same periods, is to
be done by the solicitor for the purchaser.

*Duty of
Vendor's
Solicitor.*

PURCHASES.

*Duty of
Purchaser's
Solicitor.*

II. OF THE DUTY OF THE SOLICITOR FOR THE PURCHASER.

II. Duty of purchaser's solicitor.

I. From the inception of the contract to receiving the abstract of title.

Should ascertain that the purchaser is competent to purchase.

The first thing, as it appears to me, to be done by the solicitor for the purchaser, on having a communication made to him by his client of a contract entered into by him for the purchase of an estate, is to ascertain, by due inquiries, that the purchaser is competent to enter into and perfect the contract in view, that is to say, not prevented by infancy, coverture, or the like, and moreover, that he is not so circumstanced with respect to any personal connexion he may have with the estate, or influence over the vendor, as to be prohibited by the policy of the law from becoming a purchaser; for as these are facts which can scarcely be expected to appear on the face of the abstract delivered by the vendor, and will not, therefore, regularly come under the cognizance of the counsel for the purchaser, they should be previously ascertained by his solicitor, whose personal communication with the parties themselves, or their agents, will render it easy for him to procure the requisite information.

But in imposing this obligation upon the solicitor he may reasonably expect that I should apprise him what the circumstances are, in particular, which are of this prohibitory kind. As to those arising from infancy, coverture, idiotcy, and the like, they must be too generally known to every solicitor to require to be noticed in remarks which are professedly confined to those things which I have perceived either not to be very

generally known to solicitors, or appear but seldom to occur to them. Although, therefore, the particular distinctions relative to the incapacities of infants, &c. (*a*) should not immediately present themselves to the solicitor, yet it is presumed he cannot but know that they are such as to render it necessary that the circumstances which give rise to them should be submitted to the counsel for the purchaser (*b*). Hence I shall not notice these ordinary disabilities; but confine my observations to such as arise from the connexion of the purchaser with the subject of the purchase, and with which solicitors cannot be expected to be so well acquainted.

PURCHASES.

*Duty of
Purchaser's
Solicitor.*

The circumstance of disability, which I have observed most frequently to occur, is that of the purchaser standing in the character of a trustee of the estate intended to be sold. The purchaser must therefore bear in mind that trustees are forbidden by the rules of equity to purchase the trust estate; lest they should be induced to abuse their trust by exercising their legal power over the estate with a view to their own advantage (*c*). Hence, although the sale were by public auction, and there was a fair competition, yet a purchase made by a trustee will seldom be allowed (*d*). And even where the purchase is made of the *cestui que* trust himself, the purchase will

Who disabled
from purchasing.
Trustees.

(*a*) See of the disabilities of aliens, 1 *Elem. Conv.* 2d Ed. c. 1.

(*b*) Of the incapacities of persons to purchase or otherwise bind themselves by contract, see 4 *Elem. Conv.* 2nd edition, chap. 1.

(*c*) See *Hornes v. Meeres*, 1 Vern. 467. Ex parte Reynolds, 5 Ves. 707. *Ayliffe v. Murray*, 2 Atk. 59.

(*d*) *Whelpdale v. Cookson*, 1 Ves. jun. ib. 682. Ex parte Beunet, 10 ib. 393. *Sanderson v. Walker*, 13 ib. 602.

PURCHASES. be open to the investigation of a court of equity as to its fairness (a).

*Duty of
Purchaser's
Solicitor.*

Agents.

Agents, with respect to the lands of their principals, and executors and administrators, as to those of their testator or intestate, are, for like reasons (they being in the nature of trustees), forbidden to become the purchasers of the estates under their charge (b).

Attornies.

Attornies also are prohibited from purchasing of their clients, as likewise clients of their attornies, during the continuance of such relationship between them (c), lest the situation of the client with his solicitor should render him unable, without fear of inconvenience, to refuse the solicitations of his attorney.

Stewards.

And it is the same of stewards, as to the estate of their principals (d), for their personal superintendence over the estate may have furnished them with information of mines or other advantages unknown to their principals.

**Commissioners
of bankrupts.**

Commissioners of bankrupts are also incapacitated to purchase the estate of the bankrupt.

**Assignees of
bankrupt.**

Assignees of a bankrupt (e) are in a similar situation, and not allowed to purchase any part of the bankrupt's estate.

**Solicitors to
commission.**

And so of solicitors to the commission.

(a) *Lister v. Lister*, 6 Ves. 631. *Coles v. Trecothick*, 9 Ves. 246. *Ex parte Hughes*, 6 Ves. 617. 12 ib. *Sanderson v. Wilkes*, 13 Ves. 603.

(b) See *Burden v. Burden*, 18 Ves. 170.

(c) See *Wood v. Downes*, ib. sup. *Gibson v. Jeyes*, 6 Ves. 278. *Newman v. Page*, 2 ib. 201. *Harris v. Anderson*, 15 ib. 42.

(d) *Beaumont v. Boulton*, 5 Ves. 485. 7 ib. 599. 11 ib. 500. *Ormond v. Hutchinson*, 13 Ves. 47. *Watt v. Grove*, 2 Sch. and Lef. 492. *Lowther v. Lowther*, 13 Ves. 95. sed vide *Garthside v. Isherwood*, 1 Brow. C. C. 558.

(e) *Lacy*, 6 Ves. 627. *York Buildings Company v. Mackenzie*, 8 Brow. P. C. 42.

And it is the same of committees in respect of the estates of lunatics under their care. PURCHASES.

And so likewise of guardians of charities, with respect to the charity lands (a).

*Duty of
Purchaser's
Solicitor.*

Upon principles similar to those which govern the preceding cases, guardians of infants are prohibited, except under the same cautionary eye of the court, from becoming purchasers of the estates of their wards, even after their majority, unless attained so long ago as to preclude any reasonable supposition of the continuance of a controlling influence (b); for although all legal authority may have ceased, yet some species of influence and awe, it is supposed, may still subsist for a time over the mind of the ward, which may act upon the freedom of his judgment and discretion (c).

Committees.
Guardians of
charities.
Or of minors.

Arbitrators, moreover, are not allowed to become purchasers of the subject of arbitrament, lest such a power might lead to partiality or corruption (d). Arbitrators.

Lastly, if the purchase be of an advowson from a catholic vendor, it is requisite that the purchaser be of the protestant religion (e).

Whenever, therefore, the purchaser's solicitor, upon the occasion of a contemplated purchase, discovers either of the disabilities I have noticed, it behoves him to recommend an abandonment of the contract, as the purchaser will, in all these cases, even after payment of his money and the execution of a conveyance to him (unless the contract was carried into execution under the sanction of a court of equity) be considered as a trustee only for the vendor, and consequently will neither

(a) Attorney General v. Lord Clarendon, 17 Ves. 500.

(b) Hylton v. Hylton, 2 Ves. sen. 547. Hatch v. Hatch, 9 Ves. 292.

(c) Wright v. Proud, 13 Ves. 138. Wood v. Downes, 18 ib. 120 and 127.

(d) Blennerhasset v. Day, 2 Ball. and Bent. 116.

(e) See 11 Geo. II. c. 17, and post, No. VIII. p. 78, n. (3).

PURCHASES. be capable of making a title to a future purchaser, nor secure of a peaceable enjoyment of the estate himself without application being made to the court for a confirmation.

*Duty of
Purchaser's
Solicitor.*

But if none of these disabilities exist, it will then belong to the purchaser's solicitor to prepare a memorandum of the contract for purchase, to be submitted to the approbation of the solicitor for the vendor, and to be signed by the parties. Great care will be requisite in framing this agreement, as will be perceived by reference to the first precedent of forms inserted in this work (a).

Signature of
purchaser to
draft of agree-
ment.

And as it was suggested in a preceding page (b), that where the estate is considered to be well sold it would be prudent on the part of the vendor to obtain the signature of the purchaser to the draft of the agreement; so where the purchase is deemed an eligible one, a similar precaution will of course be proper on the part of the purchaser.

Person having
contracted for
the purchase of
an estate should
revise his will
if made.

An estate contracted to be purchased being, as I have before observed (c), considered in equity as land in the hands of the purchaser, and as if it had actually been conveyed to him, and his personal estate being therefore liable, in case of his death, to make good the purchase money for the benefit of his heir at law (d); the observations made at the commencement of this introduction (e) respecting a will made by a vendor, previously to the sale of an estate, will, upon the conclusion of an agreement for a purchase of real estate, apply also to the purchaser, viz. that such alterations should be made in

(a) See post, No. I. p. 1. n. (1). (b) See ante, p. ii. (c) See ante, p. iii.
(d) Gaskarth v. Lowther, 12 Ves. 214. (e) See ante, p. iii.

any testamentary disposition he may have made of his property, **PURCHASES.**
 as the circumstance of his personal estate, to the amount of
 the purchase money being considered as real property, may
 render necessary.

*Duty of
 Purchaser's
 Solicitor.*

And it is to be observed, that in order to make such newly purchased lands (or lands agreed to be purchased), if freehold, pass by a will previously made, such will, even though it purport to devise all lands over which the testator may have a disposing power at the time of his decease, must be republished in the presence of three witnesses, in the same manner as on its original execution, for they will otherwise descend to the heir at law; the republication alone, however, without a fresh devise of the lands purchased, will be sufficient to pass them (*a*).

It follows from the doctrine just noticed, of our courts of equity considering an estate agreed to be purchased as belonging to the intended purchaser, from the time of the agreement entered into by him for the purchase (*b*), (and on a sale before a master from the time of the confirmation of his report) (*c*), that he will be liable to any loss which may subsequently accrue to it by fire or otherwise: if, therefore, the subject of the contract be a house, buildings, or other thing of a combustible nature, it will be prudent that the purchaser should insure them against casualties by fire, immediately after the execution of the agreement, unless it has been previously agreed that they shall be kept insured by the vendor till the completion or dissolution of the contract (*d*).

Should insure
 against fire.

(*a*) *Goodtitle v. Meredith*, 2 Maule and Selwyn. *Hulme v. Heggate*, 1 Mer. 285.

(*b*) *Seton v. Sladc*, 7 Ves. jun. 292. (*c*) *Ex parte Minor*, 11 Ves. jun. 559.

(*d*) See *Paine v. Meller*, 6 Ves. jun. 649, and *post*, No. I. p. 13, n. (28).

PURCHASERS.

*Duty of
Purchaser's
Solicitor.*

Purchaser
should demand
abstract, on
the day ap-
pointed for de-
livery.

Although (as has been before observed) (a), it belongs to the vendor's solicitor to prepare and deliver an abstract of the vendor's title by the time appointed in the agreement for sale, yet, in order to enable the purchaser to take advantage of any default of the vendor's solicitor in this respect, and relinquish his contract, or if he would enforce a specific performance of it, the purchaser's solicitor should demand the abstract either before (b), or at least at or soon after the time stipulated (c).

Or give notice
of his relinquish-
ment of the con-
tract.

And if he wish to relinquish the purchase, he should immediately after the expiration of the time give notice to the vendor that he considers the contract to be at an end, and demand repayment of the deposit money, if any were paid (d); for if he lie by and show an indifference about the vendor's performing his part of the contract at the time agreed upon, he will be construed to have waived his right to require it (e).

Purchaser's soli-
citor should not
receive abstract
after the time
appointed for
delivery.

Hence the solicitor should be cautious how he accept the abstract after the day upon which it ought to have been delivered, unless expressly without prejudice to his client's right to take advantage of the neglect, for otherwise he may be precluded from afterwards doing so (f).

*II. Duty of
purchaser's soli-
citor on receipt
of abstract, &c.
Compare it
with deeds.*

2dly. Of the duty of the purchaser's solicitor from receiving the abstract to the approval or rejection of the title.

Upon receiving the abstract of the vendor's title the solicitor for the purchaser must carefully examine it with the documents

(a) *Ante*, p. xxxvii.

(b) *Guest v. Homfrey*, 5 Ves. 818.

(c) See *ante*, p. xxxviii.

(d) See notice of this kind, WILDE'S SUPPLEMENT, Voc. "Notice."

(e) See *Jones v. Price*, 3 Anstr. 924.

(f) See *Smith v. Burnan*, 2 Anstr. 327. and *Seton v. Slade*, 7 Ves. 265.

abstracted, to see that their contents are fully and faithfully disclosed. Those parts of a deed which it is most essential should be set out in the abstract, I have noticed in the suggestions I have made on the preparing of an abstract (a): all these the solicitor for the purchaser should require to be inserted, or must himself insert if omitted. And in examining the parcels he should particularly attend to their identity with those agreed to be purchased, for which purpose the parcels of every deed must be read over, for to depend upon the accuracy of the statement in the abstract, of every successive deed being a conveyance of "the premises aforesaid," which is the usual language, would be extremely dangerous, as the persons usually employed in making abstracts are too often in this respect unwarrantably remiss.

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Purchaser's
Solicitor.*

Identity of
parcels.

And in examining the parcels with the abstract of the release (supposing the conveyance to be by lease and release) he should at the same time compare them with those in the lease, or bargain and sale for a year, which, although seldom done, should never be omitted; for no lands or other hereditaments described in the release will pass, unless they be also comprised in the lease for a year, except there be some prior legal possession or privity in the relessee, or the release operate by way of grant by reason of some outstanding term or otherwise, which, although frequently the case, it would be hazardous to depend upon (b).

Parcels in lease
for a year
should be compared with those
in the release.

The purchaser's solicitor should also see and state in the abstract (if it be not already done) the considerations upon

The consideration for the deed
should be noticed.

(a) See *ante*, p. xv.

(b) And see Shep. Prec. 75. also 10 Ves. jun. 255. and *Phillips v. Jones*, 3 Bro. and Pul. 362, and *sec post*, No. XIII. p. 113, n. (7). No. XV. p. 129, n. (15).

PURCHASERS. which the deeds were respectively founded, which is often material to give effect to the conveyance (unless of remote date), and as often omitted to be noticed (*a*).

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Purchaser's
Solicitor.*

Execution and
attestation of
deeds to be in-
spected.

He must also see that the abstract state by whom, and by whose direction or consent (if any) the deeds were executed, and how they were attested: these circumstances are often either wholly omitted, or too vaguely noticed to give any distinct information respecting them, although they may in many cases materially affect the operation of the assurance, and, consequently, the validity of the title.

Attestation of
appointments.

One circumstance in particular it may be material to notice respecting the attestation, that when the deed is made in execution of a power, and is required by the power to be *signed* and sealed in the presence of a certain number of witnesses, the attestation must go to the signing as well as the sealing, unless the deed bear date prior to the 30th July, 1814. The usual mode of wording attestations to deeds, viz. "SEALED and DELIVERED," &c. has led into many errors of this kind (*b*), which gave rise to the statute referred to below (*c*), which precludes objections being taken to such attestation to deeds made prior to that act; but as it is retrospective only, and leaves the law as it stood before in respect of deeds to be subsequently executed, the same care as was before requisite is still necessary to be observed as to appointments made since the operation of the act.

(*a*) And see *ante*, p. xvii, and *post*, No. II. p. 22, notes. No. VII. p. 73, n. (4). No. XV. p. 123, n. (5).

(*b*) See *Wright v. Wakeford*, 17 Ves. 454. 4 Taunt. 213. *Doe dem. Mansfield v. Peach*, 2 Maule and Selwyn, 576. *Doe dem. Hotchkiss v. Pearce*, 2 Marsh. 102.

(*c*) See 54 Geo. 3. c. 168, *post*, end of INTRODUCTION.

This would be obviated by introducing every attestation to deeds by the word, "SIGNED," instead of "SEALED."

And where livery of seisin is necessary, as in the case of a feoffment, it must be seen that this was made, and if by attorney it must be ascertained that the parties by or on whose behalf it was made or taken was living (a); unless a considerable length of time (as 20 years) has elapsed (b), which, on the principle that *omnia presumuntur, rite et solemniter acta*, renders any investigation on the subject unnecessary.

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Purchaser's
Solicitor.*

See that livery
made on feoff-
ment,

He should likewise observe and state, whether a receipt for the consideration money be indorsed, and by whom signed, the receipt in the body of the deed (unless twenty years have elapsed, or the consideration be nominal only) (c), not being conclusive evidence of the payment (d); and this is more particularly necessary where the sale was made under a power or trust to sell for the "best price which can be obtained."

and whether
receipt indorsed
and signed.

He must also recollect, whilst examining the abstract, to read the recitals; and inspect the covenant for quiet enjoyment against incumbrances, as it frequently happens that incumbrances are recited or noticed by way of exception in the covenant for quiet enjoyment, which do not appear in any other part of the deed.

Should read
recitals and
covenant for
quiet enjoy-
ment.

Finally, the solicitor for the purchaser must see whether and when the several assurances were enrolled, registered (although the deed be an appointment) (e), memorialized, or proclaimed (according to the nature of the assurance), and whether

Should see that
registry, &c. be
indorsed.

(a) See Co. Lit. 122. 309 (a).

(b) Recs dem. Chamberlayn v. Lloyd, 1 Wightw. 69. 123.

(c) See ante, p. xxvii.

(d) See Mos. 37. Coppen v. Coppen, 2 P. Wms. 290.

(e) Honeycomb v. Waldron, 2 Stra. 1064.

PURCHASES. duly stamped. And with respect to the inrolment and registry, he should not be satisfied with the evidence of the indorsement alone, but should have recourse to the inrolment or register office itself; for instances have occurred of the indorsement of registry, &c. being a disgraceful trick to delude the other party.

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Purchaser's
Solicitor.*

and examine the
offices in veri-
fication.

Time of in-
rolment.

He must also be attentive as to the time of inrolment, and see, if it be a bargain and sale under 27 Hen. 8. c. 10. to transfer an use, or the bankrupt act of 21 Jac. 1. c. 19. s. 12. to bar entails, that it be within six lunar months from the date (to be computed exclusively of the day of the date, and inclusive of the day of inrolment). But as to bargains and sales by commissioners of bankrupts made to vest the bankrupt's estate in the purchaser, the time of inrolment is not material, so that it be in the lifetime of some one of the assignees (a).

Inspect leases. The purchaser's solicitor should also call for and inspect the counterparts of all leases and agreements for leases referred to in the abstract (b); for a purchaser, having notice of a lease, is bound by the covenants, &c. on the part of the lessor (c); and not only express notice of their being leases generally, it is to be observed, is notice of their contents (d); but notice of a tenancy only, is held to be notice of the interest the tenant has in the lands (e). Hence the single circumstance of the premises being mentioned in the description of parcels or particulars of sale to be in the occupation of such an one, im-

(a) See *Hawkins v. Kemp*, 3 East, 410.

(b) And see *Anon. Freem.* 253. *Pilkington v. Shatter*, 2 Vern. 374. *Sparkes v. Smith*, ib. 275, and see *post*, No. XV. p. 147, n. (52).

(c) *Richardson v. Sydenham*, 2 Vern. 447.

(d) *Taylor v. Hibbert*, 2 Ves. jun. 437. *Eyre v. Dolphin*, 2 Ball. and Beat. 300.

(e) *Daniels v. Davidson*, 17 Ves. 433. *Allen v. Anthony*, 1 Mer. 282.

poses upon the solicitor a necessity of ascertaining, on the part of his client, the terms of such occupancy. **PURCHASES.**

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Purchaser's
Solicitor.*

The solicitor for the purchaser having examined the abstract with the title deeds, and supplied such requisites as may have been omitted by the solicitor for the vendor, will it belong to him to ascertain, by searching at the different offices, whether there be any judgments subsisting, or other incumbrances affecting the estate, which are not disclosed by the abstract; and if any be discovered, however remote in date, or even if satisfied, it will be his duty to submit them to the judgment of counsel as to their importance as against the purchaser, or as to the use which may be made of them to protect the estate against latent incumbrances.

Purchaser's
solicitor is to
search for judgments, &c.

The necessity of discovering these, if there be any, arises from judgments, &c. being a lien upon the lands of the cognizor, which lien commences by the rules of equity from the time of their being entered up upon record, but at law not till the time of their being docketed, as required by 4 and 5 Will. and Mar. c. 20.

The incumbrances which usually affect a title are judgments, statutes, recognizances, annuities, crown debts, suits depending.

And as it may be useful to the junior part of the profession to know in what cases, at what offices, and from what periods these several incumbrances are to be searched for (a), I shall make a few remarks on each of these heads.

As to when judgments and other incumbrances, which are not stated on the abstract of title by the vendor's soli- **When incumbrances to be searched for.**

(a) And see 3 Prest. Abstr. 283, and *post*, No. XV. p. 49, n. (56), *et seq.*

PURCHASES. **citor, are to be searched for, I would broadly say, that they should be searched for *in all cases whatsoever*. There are, it is true, many cases in which outstanding incumbrances may not primarily affect the title, and some in which, as it has been before mentioned, they may be made subservient to its protection: but these cases are always to be left to the consideration and judgment of the purchaser's counsel; and with this view their respective natures, and the times and purposes at and for which they were created, should be particularly stated to him.**

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Purchaser's
Solicitor.*

Where judgments, &c. to be searched for.

With respect to the particular offices or places where the searches are to be made, the information of many solicitors may probably be more correct than that with which I may be able to furnish them: I will, however, venture to mention where, as I apprehend, they may be found, wherever else it may in point of fact be more convenient or more usual to seek for them.

Judgments.

Judgments entered up in the King's Bench are to be searched for in the Judgment office; those in the Common Pleas in the Warrant of Attorney office; those in the Exchequer in the Exchequer of Pleas office; and for Chancery statutes, &c. the Seal office is to be searched; the Register office for Decrees, and the Inrolment office for Annuities. But all these incumbrances, if given in Middlesex, or other register county or place, may be sought for in the office of registry only; for unless they are there registered before the conveyance of the lands by the vendor, they will not attach upon them in the hands of a *bonâ fide* purchaser unless he has had previous notice of them.

If, however, the purchaser have notice of them, he will in

equity be considered as taking subject to them, although they be neither docketed nor registered (a).

Recognizances and other securities given to the crown, even though by bond only (b), and whether they be in chief, i. e. by the principal, or as a surety, bind the freehold lands of the cognizor, from the time at which they are recorded, and that not only in respect of any debt which may be subsisting at the time of the purchase, but also of any which he may afterwards contract, and even though the lands be in the hands of a *bonâ fide* purchaser (c). Should any such recognizances be found, inquiries must therefore be made, not only whether the vendor has already incurred any debt to the crown, but whether he is in a situation to incur any hereafter under the subsisting recognizance. And this is the more necessary, since an assignment of an anterior term in trust for the purchaser will not be a protection against crown debts, although it might be in other cases. The search is to be made in the Crown office.

And every receiver of parliamentary duties or taxes, it is to be observed, is to be considered as a crown debtor under 13 Eliz. c. 4. from the time of his appointment, which makes it requisite not only that every precautionary inquiry on contracting for a purchase from such receiver or his surety should be made with respect to any immediate debt subsisting, but that some security should be obtained against any which may be incurred in future.

And a search for judgments ought not to be dispensed with,

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Recognizances
to the king.

Sale under a
decree does not
preclude the
necessity of
search.

(a) *Davies v. Stratmore*, 16 Ves. 419, and see *post*, No. XV. p. 149, n. (57).

(b) 33 Hen. 8. c. 39. s. 2.

(c) See *ibid* Co. Lit. 130.

PURCHASES. even though the sale be made in pursuance of a judicial decree ;

Duty of Purchaser's Solicitor.

A second search should be made immediately before the execution of the conveyance.

for should there be any judgment creditor who refuses to come in under the decree, he will not be precluded from suing out execution against the lands of the vendor in the purchaser's hands (a).

The search for judgments should be made not only as soon as the abstract of title is delivered, but should also be again made immediately previous to the execution of the conveyance; for it is possible that a judgment may have been entered up since the former search (b), and all registered incumbrances which have been perfected at any time before actual payment of the purchase money, will be a lien upon the land in the hands of the purchaser.

When commissions of bankrupt to be searched for.

And moreover, if the vendor be, or has been recently in trade, or otherwise subject to the bankrupt laws, commissions of bankrupt should also be searched for (c). This search is made at the Secretary of Bankrupts' office.

Lis pendens.

If a suit be depending in either of the courts, it will be notice to a purchaser of the object of the suit (d); hence it is necessary that search should be made to ascertain whether there be any such or not. This search, for the court of Chancery, is to be made in the office of the six clerks; and for the court of Exchequer, in the Exchequer Office, and Exchequer of Pleas Office; for a subpoena alone not being notice (e), a search in the subpoena or writ office would not be sufficient.

(a) See *Barrett v. Blake*, 2 Ball and Beat. 354.

(b) See *Richards v. Barton*, 1 Esp. Rep. 271.

(c) And see 46 Geo. 3. c. 135.

(d) See *Sugd. Vend. and Pur.* 641. and cases there cited.

(e) 1 Vern. 318. 459.

As to the time from which judgments are to be searched for, **PURCHASES.** the general rule is said to be, "to search for them for ten years, and if any judgment appears in that time, to search for ten years from the more early judgment; and in like manner for ten years from each judgment which shall be found, stopping in all cases at the period when the owner became adult, unless where there be reason to suspect that there are judgments against him while a minor (a)." But why, it may be asked, is the purchaser to stop, and proceed according to these definite periods as prescribed by practice? If there be a judgment after the expiration of ten years, will it not as much affect the land as if it had been before the end of that period? and is a judgment after the expiration of ten years the more to be feared, because a subsequent one may be discovered? And again, who but the counsel for the purchaser, on the whole complexion of the title, can form any rational opinion either of the probability, or the effect of a judgment obtained against the vendor during his minority? In fact, no invariable rule can be given as to the period for which judgments, &c. ought to be searched for, as it greatly depends on the state and particular circumstances of the title: they should therefore be searched for by the solicitor, except in the cases afterwards mentioned, during the whole time in which the vendor, or his immediate ancestor, was in possession of the estate, unless otherwise advised by his counsel (b), or unless perhaps the time have exceeded forty years (after

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From what
period search
should be made
for judgments,
&c.

(a) See Essay on Abstracts, Vol. I. p. 191.

(b) Advice as to the time incumbrances should be searched for should always be solicited of the purchaser's counsel.

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Solicitor.*

Outstanding
terms, &c. a
protection in
equity only
where no notice.

If vendor
tenant in tail,
incumbrances
against re-
mainder man to
be searched
for.

which judgments have been considered to be stale, and unavailable)(1); and all that are found, however remote, should be stated on the abstract; for although they may appear to be harmless by reason of a fine, or recovery; or an outstanding term, or other legal estate which would seem to be a protection against subsequent incumbrances, yet these are considerations to be submitted to the judgment of the counsel for the purchaser, and not to rest on the opinion or responsibility of his solicitor. This is indeed a matter of very serious discretion, for although it be certain that there is a legal estate outstanding, which may be gotten in for the purpose of affording a protection against mesne incumbrances, yet it will afford such protection only against such incumbrances of which the purchaser had no previous notice; and as notice to an agent is notice to the principal (and very trifling circumstances, as even a reference in the abstract to a deed in which an incumbrance is mentioned, will in equity be constructive notice); the purchaser's counsel will probably but seldom consider it prudent to place absolute reliance upon a prima facie protection of this sort.

And in some cases, as if the vendor be tenant in tail, and the entail is proposed to be barred, and conveyed to the purchaser by fine, search should be made for incumbrances, even against those who may be entitled in remainder, expectant upon the determination of the entail; for the fine by letting in such remainder will bring those incumbrances upon the particular

(1) I have a MS. opinion of the late Mr. WILBRAHAM, in which he held that judgments entered up more than forty years past, and upon which no demand could be proved, must be considered as too stale to be regarded, *sed quare*, and see 3 Chan. Rep. 16.

estate, and consequently should any such be found, it will require some particular mode (as by recovery) to make a marketable title.

If it be safe to notice *à priori* any exception to this rule, it is in the case of a commission of bankruptcy, search for which need not, in general, be extended further back than two months preceding the conveyance to the purchaser, the lands of the vendor being now, by 46 Geo. III. c. 135. protected from acts of bankruptcy (of which the purchaser had not notice), committed subsequent to such period; but even this exception is to be admitted with great caution, for should the purchaser by any means have had notice of, or good reason to suspect the insolvency of the vendor, his having stopped payment, or having made an assignment to, or composition with his creditors at any time within five years, then it should seem the act will avail nothing, and search must be made during the period requisite before that act, i. e. for five years preceding.

Articles of agreement, made for a valuable consideration paid, will, in equity, bind the estate, and protect it against any judgments made *between the articles and the conveyance* (a), and it is therefore often deemed unnecessary to search for judgments during that interval, where the agreement is in writing, and for a sufficient consideration; but as incumbrances would certainly attach at law whilst the legal estate is in the cognizor, and the agreement would in equity be a protection only where the purchaser had no notice of such incumbrances, which (as has been already observed) is too precarious a circumstance to be depended upon, such agreement ought not to be relied upon as a security.

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Solicitor.*

Exception as to
cases of bank-
ruptcy.

Prior agreement
for purchase, a
protection in
equity.

(a) See *Peach v. Winchelsea*, 10 Mod. 486. *Finch v. Earl of Winchelsea*, 1 P. Wms. 279, 282.

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Purchaser's
Solicitor.*

Never safe to
omit the usual
searches.

Upon the whole, therefore, it will be perceived (as was before mentioned), that it can never be deemed safe to dispense with the usual searches for incumbrances, nor for a more limited period than that I have mentioned, except where the abstract has been laid before the purchaser's counsel before the search has been commenced, (and which would often save much of the expense and trouble of search) in which case the solicitor will of course be justified in limiting his search, to that period which such counsel, on being questioned as to the point, may consider to be sufficient.

Copyholds, &c.

On the subject of searching for incumbrances, some further observations might be made, applicable to particular species of property, as copyholds, leaseholds, &c. ; and particular interests in property, as a reversion, equity of redemption, &c. ; but it is to be recollected that we are now treating solely of a contract for the purchase of a freehold estate of inheritance in possession ; the remarks belonging to contracts for the sale of property of any other description are therefore to be sought for, and will be found in subsequent parts of this work.

Notice of pur-
chase money
lying dead.

If, during the progress of the transaction, any delay appears likely to take place on the part of the vendor in perfecting the title within a reasonable time after that stipulated for the payment of the purchase money, the purchaser's solicitor, in order to prevent the purchaser from being chargeable with interest (which regularly he will be from that time (a), except in the case of timber to be paid for by the purchaser, for which interest

(a) See *Davy v. Barber*, 2 Atk. 489. 6 Ves. jun. 143. 352. *Dyer v. Hargrave*, 10 ib. 505. *Fludyer v. Cocker*, 12 ib. 25.

is payable only from the time of the valuation (*a*)) should previously to the expiration of the time, give notice to the solicitor for the vendor that the purchase money is ready and lying dead (*b*); i. e. unproductive of interest.

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Purchaser's
Solicitor.*

But as it may sometimes be a question whether some part of the delay which has occurred did not originate from the purchaser himself or his solicitor, the better way in general will be to invest the money in the purchase of bank annuities, which, it is said, will at all events prevent his being liable to a greater rate of interest than the stock may produce (*c*); as, however, any such investment without the express approbation of the vendor will be at his own risk (*d*), his solicitor should endeavour to obtain the vendor's written approbation of the security upon which it is proposed to be placed.

The solicitor for the purchaser must, lastly, require evidence to be produced of all such statements, in the abstract, of deaths, intestacies, heirships, &c. &c. as are essential to perfect the deduction of the title.

Verification of
incidental facts,
&c.

The evidences requisite for these purposes have already been slightly noticed (*e*). But as the sufficiency of evidence to verify facts adduced in support of the title more particularly concerns the purchaser, and as the title to small purchases is too often left solely to the judgment of the solicitor, without being

(*a*) *Waldron v. Forrester*, cited *Sugd. Vend. and Pur.* 358.

(*b*) *Powell v. Martyr*, 8. 146. See form of such notice, *WILDE'S SUPPLEMENT*, Vol. II. *Voc.* "Notice."

(*c*) *Roberts v. Massey*, 13 *Ves.* 561.

(*d*) *Ackland v. Gainsford*, 2 *Mod.* 28. *Roberts v. Massey*, 13 *Ves.* 561.

(*e*) See *ante*, p. xxxiv.

PURCHASES. submitted to the examination of counsel, I shall here consider the same subject somewhat more at large, with a view of enabling the solicitor to know in cases of common occurrence, what evidence he ought, and what he ought not to be satisfied with.

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Solicitor.*

Facts on record.

The most satisfactory evidence of the truth of any fact is its being upon record; indeed it then becomes incontrovertible. As facts stated in an act of parliament;—of which the copies printed by authority are admitted in evidence, when the act is of a general and public nature (*a*), or is declared by the act itself to be a public act; but if it be not so declared and is of a private nature, as concerning the estates, &c. of particular individuals, its authenticity must be proved by a copy actually made from the parliament rolls (*b*).

Copies of recorded facts.

Next to records themselves, copies of records are the most conclusive evidence; but copies of such copies are inadmissible (unless the original be destroyed) (*c*), because the general rule of evidence is, that the best which can be had must be produced, and it is certain that a copy of a copy cannot be the best, whilst a copy of the original can be obtained, for errors in the transcribing will necessarily be multiplied by a succession of copies.

Copies under the great seal.

And such copies of records as are under the Great Seal, or seal of a court of justice (as exemplifications of recoveries (1) and the like), are of the greatest authenticity.

(*a*) *Rex v. Jefferies*, 1 Str. 446; *Dupays v. Sheppard*, 12 Mod. 216.

(*b*) *Holland's Ca.* 4 Co. 76, and see *Bul. Ni. Pri.* 222, 225.

(*c*) *Green v. Proude*, 1 Mod. 117; *Price v. Torrington*, Salk. 285. "For they being things to which every man has a right to have recourse, cannot be transferred from place to place to serve a private purpose." *Bul. Ni. Pri.* 226.

(1) An exemplification of a recovery, however, or even the record itself, although proof of the fact of a recovery having been suffered, is not always to be considered as conclusive and irrefragable proof of its validity, for in producing a recovery it will be necessary, unless it be of ancient date, as after mentioned,

So letters patent under the Great Seal (*a*) ; but recitals in such letters, of facts which will admit of higher proof, will not be admitted (*b*), they not being within the rule I have just mentioned, unless the grant be founded upon such recital, as the consideration for the grant (*c*).

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Solicitor.*

But exemplifications (i. e. copies under seal) of deeds not being of *record*, are not evidence, although under the Great Seal, and the reason of the difference between copies of deeds, &c. of record, and of those not of record, is that records being under the immediate care of the Court are presumed to continue in their original state, but other deeds being in the custody of the parties themselves, may have been altered by erasure or interlineation, which would not be perceived by the production of a copy.

Exemplification.

Exemplifications under the Seal of a Court of Justice are in the next degree of authenticity to those under the great, or broad Seal (*d*) ; but the Court must be such an one as was established by parliament, or the ancient common law, as the King's Courts at Westminster ; the Court of Great Sessions

Copies under
seal of a court
of justice.

to show that there was a seisin at the time in the person against whom the writ of præcipe was brought, *Green v. Eynde*, 1 Mod. 117 ; *Leach v. Cole*, 2 Roll. Ab. 395, Gilb. Ev. 21. But when the recovery is of ancient date, the difficulty which formerly must often have occurred in showing this, is remedied by the stat. 14 Geo. II. c. 20, which, amongst other things, declares, that after twenty years possession, the recovery shall be deemed to have been well suffered, although it do not appear on record, if a good tenant to the præcipe be produced, or without a tenant to the præcipe appearing, if there be a recovery of record on the face of which there appears to have been a tenant to the writ, and the person suffering it had a sufficient title to make such tenant.

(*a*) 3 Co. Inst. 173 ; *Page's Ca.* 5 Co. 53 ; Gilb. Ev. 14.

(*b*) 2 Roll. Ab. 678 ; *Montague v. Preston*, 2 Vent. 170.

(*c*) 2 Roll. Ab. 681, and see *Cragg v. D. of Norfolk*, 2 Lev. 108.

(*d*) *Tooke v. Beaufort*, Say. 297.

PURCHASES. in Wales (a) ; the County Palatine Courts and the like ; and
 —————
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Purchaser's
Solicitor.
 —————
 not a municipal or other inferior court or judicature (b), except
 of the Prerogative Court of the Archbishop of Canterbury, and
 the City of London (c), as to property of a personal nature (d).

Office copies, or
 copies not under
 seal.

Office copies of instruments of record are also admissible evidence of their contents. By office copies are meant copies made by the sworn officer appointed for making such copies ; but not under the seal of the court or officer, as the chirograph of a fine, indorsement of the inrollment of a bargain and sale under the signature of the clerk of inrolments (e) or the like ; but it is essential to their admission that they be made by such officer, and not by any one whose proper business is not to furnish such copies ; in these cases, therefore, proof must be adduced of the copy having been examined with the inrollment : but although the copy of a deed inrolled (if under act of parliament) (f), or the indorsement of such inrollment, or of registry, if made by the officer whose business it is to do these acts, is conclusive without further evidence ; yet a copy of an inrollment of a bargain and sale, made by the clerk of the peace of the county where it is inrolled, is not evidence of its contents without proof of its having been examined, because his sole office, by the statute, is to inroll the deeds, without any authority delegated to him to make copies of them (g).

And so though the chirograph of a fine, as has been before

(a) *Olive v. Guin*, 2 Sid. 145 ; Hardr. 118.

(b) *Moises v. Thornton*, 8 Durnf. and E. 303.

(c) *Woodmas v. Mason*, 1 Esp. Ni. Pri. Ca. 55.

(d) *Kempton v. Cross*, Ca. T. Hardw. 108.

(e) *Kennerley & Orpe*, Dougl. 56.

(f) See *ante*, p. xlii.

(g) *Bul. Ni. Pri.* 229.

stated, made out by the chirographer, is an authentic verification, yet his indorsement of proclamations having been made in pursuance of the statute of 4 Hen. 7, is no evidence, for the act says nothing of his making copies of such proclamations; hence they must be examined with the record, in order to their verification (a).

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Copies, however, examined with the originals, and sworn to be true copies, are admissible in many cases for the furtherance of justice, when there is no proper officer appointed to make them, and the removal of the original might be attended with danger or inconvenience; thus copies of the journals of the House of Lords (b), copies of the transfer books of the East India or other public Company (c), are all allowed to be evidence; and so of like cases, but this is only where the original itself is of such a nature as to be admissible evidence if produced (d).

Sworn copies.

Depositions in Chancery are another species of evidence of record not under seal, and of which copies made by the proper officer are admissible evidence of the facts deposed; but this, it is to be understood, is only when the matter in question is before, or within the cognizance of that court, for as the law does not recognize courts of equity, they are not legal evidence, unless examined with the roll.

Chancery depositions.

Other evidences of record are verdicts or judgments pronounced in the superior courts of record, which, when given on the merits of the case, preclude all future claims by the same person and all claiming under him, or concerned in interest re-

Verdict in real action.

(a) Bull. Ni. Pri. 230. Hatch v. Black, 2 Marsh. 170.

(b) Jones v. Randal, Cowp. 17; Birt v. Barton, 1 Dougl. 166; Rex v. Lord Gordon, 2 ib. 569.

(c) Rex v. Gordon, ub. sup. n. (3).

(d) Lynche v. Clerke, 3 Salk. 134.

PURCHASES. *Duty of Purchaser's Solicitor.* specting the same land, &c. (a). But in order to the admissibility of a verdict as evidence of a fact, the copy of the judgment founded upon it must be produced, unless where the verdict was upon an issue out of Chancery, in which case the decree of the Court is evidence as to no new trial or reverse of judgment having taken place; it not being usual in such cases to enter up judgment in the court of law (b).

Evidence not of record. The evidences I have hitherto been noticing are all matters of record, but there are many other species of evidence, as well of a public as a private nature, admissible to substantiate facts relative to the title to an estate; and it may be observed, generally, that as to all of these, copies verified by the oath of the copyist will be evidence whenever the original itself if produced would have been so.

Proceedings in courts of equity. Proceedings in our courts of equity are not records like proceedings at law, "because the judgment there is *secundum equum et bonum*, and not *secundum leges et consuetudines*; and the reason that any record is of validity and authority is its being a memorial of what is the law of the nation: now chancery proceedings are no memorials of the laws of England, because the Chancellor is not bound to proceed according to the laws (c)." But a decree of that court is, in matters within its jurisdiction, equal to a judgment at law, and governed in questions between party and party by the same rules, and therefore evidence against them, and all persons claiming from them (d), so far as regards those particular matters.

(a) *Charges v. Sherwin*, 12 Mod. 343; *Reid v. Jackson*, 1 East. 355, in note. *Outram v. Morewood*, 3 ib. 346; *Marriott v. Hampton*, 7 Durnf. and E. 269.

(b) *Bul. Ni. Pri.* 234.

(c) *Bul. Ni. Pri.* 235.

(d) *March, Mill-case*, Dougl. 222. n. 13. and see *Buchanan v. Rucker*, 1 Camp. 63. and *Burke v. Crosbie*, 1 Ball and Beat. 489.

So proceedings of the ecclesiastical court are not records, "because those courts are not derived by immediate authority from the king, but from the bishop; and there is no court declarative of the sense of the common law but such as receive immediate authority from the king, the person intrusted with the executive power of the law (a)."

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Ecclesiastical
court.

But so far as concerns our present subject (i. e. admissible evidences in titles), this doctrine is applicable in respect of real estates only, concerning which the ecclesiastical court has no jurisdiction, and its proceedings *coram non judice*, and therefore the probate of a will there, is to be considered merely as a copy of the will, and a copy of such probate, therefore, no more than a copy of a copy (b). And hence where it is necessary to prove a title leading through a will, the will itself or a copy of it as to real estates must be produced in court (c); or the ordinary ledger-book of registry (which is a roll of the court (d)). But in respect of chattels, as estates for years, and things of a personal nature, that court has an original and independent jurisdiction; the probate, therefore, as to things of this kind, is to be considered as an original record, and a copy of it, taken by an authorized officer, is admissible evidence (e), and consequently conclusive as to the person named as executor, being such (f).

And so letters of administration granted by the ecclesiastical

(a) Bul. Ni. Pri. 236.

(b) See *Nettar v. Brett*, 2 Roll. Ab. 678. *Koe v. Nelthorpe*, 3 Salk. 154. *Ash v. Calvert*, 2 Camp. 388.

(c) Ibid.

(d) Anon. 12 Mod. 375. and see Bul. Ni. Pri. 246.

(e) Ibid. and see *Dike v. Polhill*, Raym. 744. *Allan v. Dudas*, 3 Durnf. and E. 925. *Rex v. Inhab. Netherseal*, 4. ib. 253.

(f) *Smartle v. Williams*, 3 Lev. 387.

PURCHASES. court are proof of the person to whom they are granted being the true administrator, as is also a certificate (for exemplifications are not granted) of such letters having been granted, and even it seems, the book in which the order for granting them is entered (*a*); and so is the account book in the registry of the court, or an examined copy of it (*b*). And so the sentence or judgment of this court, determined *ex directo*, will in all matters concerning which it has competent jurisdiction, be conclusive evidence of the rights of the parties, and of their representatives (*c*).

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Proceedings in
county and
manor courts.

And the same observations apply to proceedings in the county and other inferior courts, not deriving their authority immediately from the king, but from the baron of the county or other derivative sources. But as these courts were anciently courts of administrative justice in all matters of property within the county, and the rolls of those courts are the public documents by which the inheritance of every tenant is preserved (*d*); such rolls are admitted as evidence of title, as to matters within their sphere.

As are also the descent rolls of the manor admissible evidence of the truth of facts stated to have been found by the homage, and of other the contents of such rolls (*e*).

And so of copies of the court rolls authenticated under the hand of the steward of the manor (*f*), and other documents trans-

(*a*) *Garrett v. Lister*, 1 Lev. 25.

(*b*) *Elden v. Keddell*, 8 East, 182. *Davis v. Williams*, 19 ib. 232.

(*c*) *Trotter v. Blake*, 2 Mod. 231. *Mildmay v. Mildmay*, 1 Vern. 53.

(*d*) *Bul. Ni. Pri.* 247.

(*e*) *Roe dem. Bechee v. Parker*, 5 Durnf. & E. 26. *Doe dem. Mason v. Mason*, 3 Wils. 63.

(*f*) *Snow v. Carter*, 1 Keb. 567. *Lec v. Brothby*, ib. 720.

mitted down to him from his predecessors as a customary of the manor, by assent of the tenant (a). And although the court-roll copies are not made or authenticated by the steward, yet if sworn to be true copies on examination with the original, they may be admitted (b).

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Other evidences, not of record, are the registers in parish ledgers, of marriages, christenings, burials, &c. which are admissible in all questions, to which they relate; they being made and kept by the minister performing those functions, as an authenticated person for that, with other purposes.

Parish registries and entries.

And hence such registry of the christening of a child as the son or daughter of such a father and mother, without any mention of its being baseborn (which is usually noticed), is deemed evidence not only of the fact of its birth, but also of its legitimacy (c).

So entries in books of the navy-office are evidence of the death of a sailor in the king's service (d).

Navy registers.

So entries made in the books of a corporation are evidence of the truth of the matters there stated (e); and so of the books of the Bank of England (f), and of the East India Company (g).

Corporation books.

Some deduction of pedigree is necessary to make a title as heir to a deceased ancestor, although he may be treated or

Pedigrees.

(a) Denn dem. *Goodwin v. Spray*, 1 Durn. & E. 466.

(b) *Ca. Manor of Bray*, 2 Mod. 94. *Tuckey v. Flower*, Comb. 138. *Rex v. Harris*, *ibid.* 337.

(c) *May v. May*, 2 Stra. 1073, and see *Rex v. Head*, cited *Peak. Evid.* 86. in notes.

(d) *Bul. Ni. Pri.* 249.

(e) *Broches v. Mayor of London*, 1 Stra. 307. and see *Rex v. Gwin*, 1 Stra. 401.

(f) *Bretton v. Cope*, *Peak. Ni. Pri. cases*, 30.

(g) *Lynch v. Clarke*, 3 Salk. 154.

- PURCHASES.** described as such by the ancestor in his will or otherwise, the ancient may think he is the heir, although he may be of the half blood only, or the like (*a*). But such pedigree may be supported by sworn evidence of his having been received and considered as the heir, or by entries in the family Bible, monumental inscriptions, recitals in ancient deeds, &c. where no more certain evidence is produced in falsification of the supposed fact (*b*). So a verdict or bill in chancery stating a pedigree (*c*).
- Herald's books.** The books of the Herald's office are also admitted as evidence to support a pedigree (*d*).
- Lease.** And an original lease, with the assignment to a purchaser, is evidence of the assigner's title; as mesne assignments will be presumed (*e*).
- Terriers, &c.** Old surveys of land, or terriers accompanying the title deeds, are admitted to be evidence of identity, boundaries, &c. of lands described in them (*f*); and so an ecclesiastical terrier, or survey made in pursuance of the canons, has been admitted (*g*).
- Maps.** Maps and plans of estates made a long time back, and kept with the deeds, are of a similar nature, and entitled to the like credit (*h*).

(*a*) *Roe dem. Thorn v. Lord*, 2 Blac. Rep. 1099. and see *ante*, p. xxxv.

(*b*) *Bul. Ni. Pri.* 233.

(*c*) *Taylor v. Cole*, 7 Durnf. and E. 3. n. (1).

(*d*) *Rex dem. E. Thanet v. Foster*, T. Jones, 224.

(*e*) *Earl dem. Goodwin v. Baxter*, 2 Blac. Rep. 1228.

(*f*) But a terrier in the hands of the parson, of glebe lands, although strong evidence as against himself, is deemed of little weight in substantiation of his title, unless signed by the churchwardens or other substantial inhabitants. *Bul. Ni. Pri.* 248.

(*g*) *Miller v. Forster*, 2 Anstr. 387. sed vid. *Atkins v. Hutton*, ib. 386.

(*h*) *Yates v. Harris*, cited *Gilb. Ev.* 78. *Bridgeman v. Jennings*, 1 *Ld. Raym.*

And even any ordinary paper throwing light on a title, if written at a time prior to any question of right having arisen, and more particularly if the statement be repellant to the claim or interest of the party making it (*a*), will (if uncontradicted by stronger evidence) be received as evidence of the fact to be proved. An attorney's entries of charges for preparing and attending the execution of a deed, and of their having been paid (*b*), has also been admitted as evidence of the deed having been executed. Entries by a steward in his private book, of receipt of sums for trespasses on a common, have likewise been received to prove a right to the freehold (*c*).

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Private written
evidence.

The abstract having been now, as we will suppose, carefully compared with, and corrected by the original documents of title, by the purchaser's solicitor, and all the alleged facts satisfactorily or presumptively verified, it belongs to him to submit the whole to some counsel of eminence for his opinion of the title, with directions, if approved, to prepare the conveyance (1).

(*a*) *Outram v. Morewood*, 5 Durn. and E. 121. *Doe dem. Baggally v. Jones*, 1 Camp. 367. *Brown v. Rawlings*, 7 East, 279. and *Marlbro v. Guidot*, cited 2 Ves. jun. 193.

(*b*) *Warren v. Greenville*, Stra. 1129.

(*c*) *Barry v. Rebbington*, 4 Durnf. and E. 514. and see *Stead v. Heaton*, ib. 669.

(1) The title should unquestionably, as often as it can be done, be submitted to some conveyancing counsel, before the purchaser be suffered to complete his purchase; but as cases may occur (and frequently do), when either by reason of a remoteness of residence from any practising counsel, or other cause, this cannot conveniently be done, and as in such cases it will fall upon the purchaser's solicitor alone to determine upon its validity, it would, I conceive, be of infinite use and importance to every young solicitor as well as to his clients, were he, before

Requisites to a
conveyancing
solicitor.

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Instructions to
counsel to pre-
pare convey-
ance.

3dly. Of the duty of the purchaser's solicitor from the acceptances of the title, until, and after the execution of the assurances.

The title being, we will suppose, approved, it belongs to the solicitor for the purchaser, unless otherwise agreed, to prepare, or procure to be prepared, the draft of the conveyance. This should, however, seldom be done without the advice of counsel. The time and attention of a solicitor (particularly if a London practitioner) is generally too much occupied in the conducting of suits through the different courts, and other matters connected with that line of the profession, to allow him an opportunity of acquiring any thing beyond a very scanty knowledge of the rules which govern the possession, or the transfer of real property. And even the country solicitor, although he has less to do with the immediate conduct of suits, yet, unless he has had the advantage of attending the office of a regular conveyancer, (which is seldom the case, but which he would find incalculably beneficial to him), is not likely to possess that degree of information on the subject which the interest of his client, and consequently his own reputation, demands. The preparing of a conveyance after the title has been approved (and, perhaps, the species of assurance and necessary parties pointed out by counsel), may seem indeed to be a very easy task; but it is, in truth, not so often without difficulty as may generally be imagined: what solicitor, for example (to give a single instance only) will venture to pronounce the circumstances under which

commencing practice, to make himself acquainted with the essentials to what is called a marketable or selling title; and also with the particular species of conveyance, and accompanying assurances, which, under every ordinary circumstance attending a title, would be the most proper to carry the views of the parties into effect. These objects have therefore been made the principal topics of the LECTURES I. have announced, by way of CONVERSATIONAL DISCOURSES, on what may be called the every day practice of a conveyancer.

the usual limitation to prevent dower will fail to take effect by reason of the statute and doctrines of uses? or when, in an appointment made in pursuance of the power contained in that limitation, the covenant will fail to run with the land, as in conveyances derived from the seizin of the grantor (1) ?

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(1) Solicitors, when the title has been through good hands, or approved by counsel on a recent occasion, frequently (in order to save expense to their clients), lay immediate instructions before counsel to prepare the conveyance, stating that they are satisfied with the title. But how is the counsel to prepare the conveyance without himself knowing the state of the title? And how is he to know the state of the title without perusing the abstract? There may be subsisting entails, outstanding terms, or other legal or equitable interests, which, although not impeaching the title, will render it necessary that a different mode of conveyance should be adopted on the purchaser's behalf, than if there were no such outstanding interests. It is unfair, therefore, to impose upon counsel the necessity of making himself acquainted with the title, and yet withhold from him the remuneration to which such an investigation would justly entitle him.

Criticisms on
the practice of
solicitors.

This practice is perpetually occurring, but it is so fraught with illiberality to the counsel, and mischief to the client, that it ought to be no longer countenanced, or suffered to continue.

Another objectionable practice prevailing among solicitors is, the requesting, for the same purpose of saving expense, that the different interests which are discovered to be outstanding in a title may be transferred to the purchaser or his trustee by one and the same deed. There are indeed few cases in which this cannot, in point of fact, be done, and, in compliance with the wishes of the solicitor, it frequently is done; but it frequently also gives rise to much embarrassment and inconvenience, at a future time, and by blending or compressing in one deed, interests which may be subsequently separated, often occasions an expense hereafter, three times beyond that which is immediately saved.

A compliance with the common request that a conveyance or other assurance may be made by indorsement upon some prior deed, is also a thing often pregnant with the same mischief. Restrictions of these kinds should therefore never be imposed upon the counsel, who should at all times be left to his own discretion and judgment, as to the mode best calculated to assure his client's security. And it is extremely illiberal and unjust to suppose that he would, in any case,

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When, however, the solicitor sees it to be honestly consistent with the duty he owes to his client, to prepare the conveyance him-

by either multiplying the number of assurances beyond what may be requisite, or by adopting a different form of assurance than the most eligible, increase the expense beyond what the circumstances of the title may render advisable.

Conciseness in preparing conveyances is, likewise, too generally requested by solicitors, on account of the pressure of the stamp duties, and so far as this object is attainable, by suppressing all synonymous words and circumlocutory phrases, it is harmless and desirable, but beyond this it is, generally speaking, dangerous (a); for independently of the stability which the present forms of assurances have acquired by long usage, it is to be observed that the various provisions in deeds, which may illiberally be conceived by many to have been introduced for the sole purpose of enriching the practitioner, will be found on investigation to be designed to answer the most beneficial ends to the parties. It becomes the solicitor, therefore, to check this teasing anxiety in his client after frugality, as the whole purchase money may be placed in jeopardy by this anxiety to prevent a trifling augmentation in the expense.

I will conclude these remarks (to which I might have added many others) by a word or two relative to the actual payment of the remuneration which the solicitor acknowledges to be due to counsel for the advice and assistance afforded to his client. Gentlemen educated to the bar, it is to be recollected, are more frequently than otherwise the younger branches of their respective families, and have entered into the profession as a means of increasing a patrimony too small of itself to support the style and sphere of life in which they have been accustomed to act, and this small patrimony is very often wholly or nearly exhausted in the necessary expenses attending upon their professional education (notwithstanding the most economical mode of life), during the time which may have elapsed before they have an opportunity of making known their attainments. Hence, the remuneration to which they are entitled may properly be considered during the earlier period of their practice as (in a homely phrase) their daily bread; no remissness should therefore take

(a) See observations of Lord Alvanley, in *Hesse v. Stevens*, 3 Bos. and Pull. 565, also 2 Prest. Conv. 118.

self, either finally or for the approval of counsel, or where it belongs to him to peruse it as solicitor only for the vendor, the forms and annotations contained in the present work will, it is hoped, be competent to guide him.

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But although the draft has been prepared by counsel, the description of the parcels must, in general, be inserted, or left for correction by the solicitor, as it seldom happens that the particular lands sold are so distinctly separated from others comprised in the same title, that they can be discerned with sufficient accuracy or certainty by the counsel who prepares the draft; hence it may be proper to make some remarks on the proper description of the premises intended to be conveyed. The description contained in the last prior assurance should, as nearly as possible, be preserved; and where any variation has

Parcels indeed.

place on the part of the solicitor in offering the hard-earned tribute. It is also, in other points of view, not a little prejudicial to a young practitioner; as it not only suppresses the ardour and dissipates the fixed attention necessary to his continued exertions in his profession, but by abating the stimulus to action, is apt to render him careless in the execution of the duties imposed upon him, and is therefore in the end as injurious to his client as it may be inconvenient to himself; and again, how can it be reasonably expected that a professional student can supply himself with the numerous and expensive statutes and reports of adjudged cases and other books, which are absolutely necessary for his attaining sound and accurate information of the law upon the questions submitted to him, if the means of possessing them are withheld from him, and that, too, by those for whose benefit, equally with his own, it is that he is desirous to possess them?

It is moreover hurtful, even in a moral point of view, by abating his hopes of affluence and independence (to which who of us does not secretly aspire?); it depresses, and in depressing, tends to degenerate and debase the mind from those exalted principles of honor and probity whence alone it feels itself incapable of an unworthy action, till at length, notwithstanding every struggle of which his nature is capable, the pressure of pecuniary embarrassments, adduced by the remissness, to which I am alluding, of the solicitor, ultimately leads him to adopt a middle course between his duties and his necessities, without duly considering that there can be no middle course which is not more or less a deviation from the true path of rectitude.

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Deeds of ex-
oneration to be
prepared by
vendor's soli-
citor.

Purchaser's
solicitor to ob-
tain attested
copies of deeds
not to be de-
livered.

recently taken place, which makes them differ from their description in the more ancient assurances, then, after their present description, there should be introduced that to which they formerly corresponded, as "but which said messuage was late or formerly two messuages," &c. &c. so as to connect the present with the former or ancient description, in such a manner as that their identity may with certainty appear, without the necessity of having recourse to any other deed, or *aliunde* evidence (a).

All deeds, however, excepting the deed of conveyance itself, i. e. all deeds necessary to exonerate the estate from incumbrances and vest a clear inheritance in the purchaser, as also assignments of terms to attend the inheritance (unless already assigned), and covenants for the production of title deeds not delivered to the purchaser, are, as we have before seen, to be prepared by the solicitor for the vendor (b).

Upon the draft of the conveyance being settled and approved by counsel, and by the solicitors of the respective parties, the solicitor for the purchaser should give notice to the vendor's solicitor of the deeds which the purchaser will expect to be delivered to him on the completion of his purchase, and also of those of which he will require attested copies at the vendor's expense, in order that they may be ready for delivery on the execution of the conveyance. The deeds to be comprised in this notice will, with respect to the originals, be (generally speaking) all such as relate to the purchased lands only, or to those with others of inferior value; and with respect to attested

(a) And see *post*, No. XV. p. 128. n. (13.) and No. XXVII. p. 405.

(b) See *ante*, p. xii and *post*, No. I. p. 6, notes; and p. 12, n. (26).

copies, those of which such originals are not delivered over, **PURCHASES.**
unless they be of record (a).

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It may not be amiss in this place to caution the purchaser's solicitor against suffering his client to take possession of the estate before the conveyance is executed to him, as this would *prima facie* be considered as evidence of his having waived all objections to the title, and would, in fact, be a waiver of such as he had previously taken, or had express notice of. If, therefore, immediate possession be a matter of great convenience to the purchaser, and the title appear to be fair, or the difficulties which exist are likely to be removed, he should take from the vendor a memorandum that his taking possession shall be without prejudice to his right of rejecting the purchase, should the title prove defective (1).

Taking possession before conveyance.

With respect to the ceremony of execution, it is generally understood to be necessary, (and the purchaser's solicitor must therefore see), that every deed of conveyance be signed by the vendor (a), although some hold that sealing alone is sufficient, and apparently with reason, for placing the *signum* is putting the sign or token of assent; and that this was all that was formerly considered requisite is clear from the old attesting

Purchaser's solicitor to see execution by the vendor.
Signing.

Sealing.

(a) See Gilb. Ev. 86. 10 Ann. c. 18. s. 3. 8 Geo. 2. c. 6. s. 22. Garrick v. Williams, 3 Taunt. 544. Hobhouse v. Hamilton, 1 Sch. and Lefr. 207. 14 East. 231; also post, No. I. p. 14, n. (29).

As to what deeds are and what are not considered as of record, for this purpose, see ante, p. xiii.

(1) See post, No. II. p. 36, n. (29).

(a) And see 2 Blac. Com. 306.

PURCHASES. words, "sealed and delivered," which are continued to the present time without any mention of signing (*a*).

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Delivery.

It appears also to be requisite that the deed should be delivered (*b*), unless in the case of a corporation, where the seal of the corporation is sufficient without livery (*c*); and it is to be observed, that such delivery must, in order to perfect the conveyance and pass the legal estate, be to the purchaser himself or his agent; for if the deed be retained by the vendor or his agent, its operation will be suspended until it be delivered over to the purchaser (*d*). And when the deed is a feoffment delivery must also be made of seisin of the land, for which purpose the person giving seisin may take hold of a clod of earth, or twig of a tree from off the land, &c. intended to be conveyed, and say (the feoffee being present either personally or by his attorney) "I deliver you possession and seisin of the hereditaments comprised in this indenture, to hold according to the tenor and true intent of the said indenture," or to that effect (*e*).

Execution of
the deed by an
agent or at-
torney.

The form of the *testatum* clause, "In witness whereof," &c. in the ordinary mode of execution by the vendor himself, is so well known that it would be superfluous to insert it here. But if the deed be executed by an agent or attorney, it may not be wholly unnecessary to notice that this clause should express that "C. D. of, &c. (*the attorney or agent*) by virtue of a

(*a*) See Shep. Prec. of Prec. 8. *Cromwell v. Grundsden*, 2 Salk. 462.

(*b*) See Shep. Prec. of Prec. 10. *Clavering v. Clavering*, 2 Vern. 475. *Derby Canal Company v. Wilmot*, 9 East. 361.

(*c*) Vide 2 Roll. Ab. 23. pl. 50. *Willis v. Jermin*, Cro. Eliz. 167.

(*d*) Dav. Rep. 44. *Derby Canal Company v. Wilmot*, 9 East. 361. Co. Lit. 36, and see post, No. XV. p. 158, notes, and p. 184, notes.

(*e*) See post, No. XVII. p. 227, notes.

power or authority enabling him thereunto (a true and at-
 tested copy whereof, or a counterpart whereof, is hereunto an-
 nexed) (a) hath hereunto set the hand and seal of the said
 (*vendor*) (b) the day and year, &c." And the agent or attorney
 must accordingly subscribe the name of his principal (c), and
 not (as is often done) his own name; thus, "A. B. (*the*
vendor) by the said C. D. his attorney," and the like of the
 receipt for the purchase money; and the words to be used in
 the delivery should be, "I deliver this as the act and deed
 of the within named (*vendor*);" and the attestation may be,
 "signed, sealed, and delivered, &c." by the aforesaid (or above
 named) (*agent*) in the name, as the attorney, and as the act
 and deed of the within named (*vendor*), by virtue of, &c. *as*
above, in the presence of, &c.

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Attestation of
 agent's execu-
 tion.

And where a deed is executed by a power of attorney, it is
 usual and proper that an attested copy of it should be annexed
 to the deed; but it is still more satisfactory that there should be
 two parts of the power, one to be retained by the attorney, and
 the other to accompany and be annexed to the conveyance,
 because any purchaser, under a deed executed by attorney,
 will have a right to call for a production of the power, that he
 may ascertain the competency of the agent's authority (d).

Attested copy
 of power of at-
 torney to be an-
 nexed.

And when a conveyance is executed by attorney, it is also
 prudent, on the purchaser's behalf, that the purchase money
 should be retained by him, or paid into the hands of a third

On execution
 by attorney,
 purchase money
 to be retained.

(a) The power itself is to remain in the hands of the agent, for his justification.

(b) See *post*, No. II. p. 37, n. (31), p. 14, n. (28).

(c) *Wilkes v. Backe*, 2 East. 142. *Hawkins v. Kemp*, 3 East. 410. *White v. Cuyler*, 6 Durnf. and E. 176.

(d) See 1 Esp. Rep. 90. and *post*, No. II. p. 20. notes, and No. XVI. p. 184. notes.

PURCHASES. person, on his executing a declaration of trust to stand possessed of it for the purchaser, until sufficient evidence be produced of the vendor having been alive at the time of the execution of the conveyance by his attorney, and if he prove not to be, then to return it to the purchaser unless the heir of the vendor should confirm the purchase (a).

*Duty of
Purchaser's
Solicitor.*

Purchaser need
not accept of
execution by
attorney.

It is, however, to be noted, that a purchaser is not obliged to accept of the execution of a deed by attorney (b); for although if the power of delegation be sufficient, and the principal be alive, the execution will be as valid as if by the principal himself, yet if he be not living at the moment of execution by his attorney, the execution will of course be void for want of authority in the party. If, therefore, the vendor reside abroad, a preferable mode will be to prepare for his execution a conveyance to a trustee or trustees in trust, to sell, and receive, and apply the purchase money, in which case a conveyance by him or them to the purchaser will be valid notwithstanding the death of the vendor. And where the deed is to take effect solely in execution of a power, execution by attorney would be wholly void, (unless authorised by the power) as a mere power cannot be delegated to another (c).

Power cannot
be executed by
attorney.

*Attestation of
witnesses to
vendor's exe-
cution.*

The execution of the deed (except by a body corporate) should be attested by at least two subscribing witnesses: this, however, is proper, rather for the sake of the more easy proof of the execution than from its importance as to the validity of the deed (d) (1); and as the execution will not be permitted to

(a) See *post*, No. XVI. p. 184, notes, and WILD. SUP. voce BOND.

(b) *Mitchel v. Neale*, 1 Ves. sen. 679.

(c) *Combe's Ca.* 9 Co. 75. *Hawkins v. Kemp*, 3 East. 410.

(d) See *Garret v. Lister*, 1 Lev. 25. and 10 Ves. jun. 474.

(1) Some gentlemen appear to consider the attestation by witnesses as essential, see 1 Prest. Abstr. p. 71; but I do not discover any reason or authority in support of such an opinion.

be acknowledged by the party himself (*a*), but must be proved by at least one of the subscribing witnesses (*b*), unless where the deed is of ancient date (*c*), or the witnesses are abroad (*d*), or cannot be found (*e*). The purchaser's solicitor should take care, as far as he is able, to see that such witnesses only be allowed to attest the execution whose evidence is likely to be easily obtained, should it be requisite.

PURCHASES.

*Duty of
Purchaser's
Solicitor.*

And if the deed be in exercise of a power or trust requiring it to be executed with any particular formalities, he must also take care that those formalities be scrupulously attended to, and that the form of the attestation be made to correspond. If, therefore, the deed be required to be signed, sealed, &c. in the presence of and attested by a certain number of witnesses, he must not only see that it is executed, but that the attestation express its having been signed, &c. in the presence of the witnesses. For it is to be observed, that the late act of 54 Geo. III. c. 168, merely cures the defects in this respect which were then subsisting, without validating the execution of future deeds, where the requisite formalities may not be duly pursued, or attested (*f*).

**Execution and
attestation
where deed is in
execution of a
power.**

If the purchaser be not entitled, according to the established practice, to the title deeds (which I apprehend he is not, where they relate to other lands of the vendor, however small the

**Covenant for
production of
title deeds by
vendor.**

(*a*) *Barnes v. Trompowskey*, 7 Durnf. and E. 265. *Prince v. Blackburn*, 2 East. 250. *Adams et ux. v. Kerr*, 1 Bos. and Pul. 360.

(*b*) *Philips v. Parker*, 1 Campb. 412.

(*c*) *Thompson v. Miles*, 1 Esp. Rep. 185.

(*d*) *Princes v. Blackbourne*, 2 East. 250. *Carrington v. Payne*, 5 Ves. jun. 404.

(*e*) *Cunliffe v. Sufton*, 2 East. 193.

(*f*) And see *post*, Vol. II. No. XXXIV. and Sugd. Pow. p. 231.

PURCHASES. quantity or value, unless otherwise agreed, or expressed in the deed), he has a right to require a covenant at the vendor's expense for the production of them, and this he should take by a separate deed, in order that he may not be obliged in proffering it, should it be necessary, to expose his own purchase deed, or furnish notice of deeds which cannot be obtained (*a*).

*Duty of
Purchaser's
Solicitor.*

Several covenants for production.

And in some cases it will be proper that distinct covenants should be taken for the production of particular deeds, as where different parts of the estate are held under different titles, or particular deeds relate solely to a part of the estate, which the purchaser may have in view to dismember from the rest, or the like; but where this is done solely for the accommodation of the purchaser, the additional expense it may occasion must of course be borne by him (*b*).

Attested copies to be given.

He may also demand attested copies at the vendor's expense (*c*) of all deeds not delivered to him, except only of such as are of record (*d*), duly stamped, as required by the stamp acts (*e*).

What assurances to be prepared by and at the expense of the purchaser.

With respect to what assurances are to be prepared by the purchaser's solicitor at the expense of his client, it is now an established rule, that, in the absence of any contrary agreement between the parties, the purchaser is to have prepared at his own expense, all such conveyances as are necessary to take a clear and marketable estate from the vendor himself or his trustee, and of such only; (all deeds necessary to clear the

(*a*) And see *post*, No. XVI. p. 183. notes.

(*b*) And see *post*, No. XXVII. p. 425.

(*c*) See *Berry v. Young*, 2 Esp. Ca. 640. *Dare v. Tucker*, 6 Ves. jun. 460.

(*d*) *Campbell v. Campbell*, cited *Vend. and Pur.*

(*e*) Vide *Dare v. Tucker*, *ub. sup.* and see *post*, No. XV. p. 155. n. (27).—No. V. p. 14. n. (29).

title of incumbrances and outstanding interests being, as has already been noticed (*a*), to be borne by the vendor). But outstanding terms which have been already assigned to attend the inheritance, discharged of the trusts for which they were created, are to be assigned or surrendered at his own expense; it being for his own private satisfaction only, and not necessary for his protection, that the term be vested in a trustee of his own nomination; as must all other assurances which he may require as precautionary only against latent defects or incumbrances, of which there is no direct evidence, nor any such plausible grounds of suspicion as would uphold him in refusing to accept the title (*b*).

PURCHASES.

*Duty of
Purchaser's
Solicitor.*

A purchase is sometimes made in the name and with the money of a third person; where this is the case, it is the duty of the solicitor for the real purchaser to procure without loss of time a declaration of trust to be indorsed on the conveyance and signed by the nominal purchaser, explanatory of the transaction (*c*).

Purchase by agent.

The purchaser's solicitor must also be careful to see that the vendor sign an indorsed receipt for the purchase money, the acknowledgment in the body of the deed not being evidence of payment (*d*).

Receipt.

Where no time is mentioned in the deed, from which the purchaser is to have the rents and profits, or where the execution has been delayed beyond the time mentioned for that

From what time purchaser entitled to rents, &c.

(*a*) See *ante*, xxxiii.

(*b*) And see *post*, No. I. p. 6. n. (11).—12. n. (25).—14. n. (29).—No. III. p. 40. n. (15).—No. V. p. 60. n. (12).

(*c*) For the form of a declaration of trust of this kind, see WILDE'S SUP. voc. DECLARATION.

(*d*) And see *post*, No. XV. p. 124, n. (7), 125, n. (8), No. XVI. p. 186, notes.

PURCHASES. purpose, disputes have sometimes arisen on this point, which makes it perhaps not wholly unnecessary for me to mention that the purchaser is of course (unless it be otherwise agreed) entitled to the rents and profits from the last quarter day preceding the execution of the deed, except in the case of a colliery or other thing of which the profits accrue daily, when the course is, for the purchaser to have the profits from the last week or other period at which the accounts are usually made up; and where the sale is under a decree, the same rule also prevails, provided the purchaser pay his money before the then next ensuing quarter (a).

*Duty of
Purchaser's
Solicitor.*

To prevent, however, any difference occurring in this respect, the purchaser's solicitor, where the execution of the deed has been delayed beyond the time agreed upon, or mentioned in the deed for the purchaser to take the rents, should take care to insert in the deed, at the time of the execution, the true period from which the rents are to belong to the purchaser; but he should never effect this purpose by altering the date of the deed, a thing which should not be done (although it often is), in any case whatever, as upon proof of the actual time of execution, it would avail nothing, the time of the delivery of the deed being that from which it takes effect; and an alteration of the date might in some cases vitiate the deed, and subject the solicitor to serious animadversion, and even penalties.

Registry.

The conveyance being perfected by execution, it is to be considered, by the purchaser's solicitor, whether any rule of law or statute require any further act to be done to give it

(a) See *Wren v. Kirton*, 8 Ves. jun. 502, 11 ib. 377; and *ante*, No. I. p. 8, n. (16), (17).

full operation, as registry, enrolment, or the like. No time is required by the registering acts, within which the registry is to be made; but as a subsequent purchaser from the same vendor, or from his heir after a purchase from his devisee, without notice of an anterior sale, would gain a priority, were he to get his conveyance registered before the registry of the first conveyance, there should be no time lost in procuring this to be done.

PURCHASERS.

*Duty of
Purchaser's
Solicitor.*

As to enrolment, this must be done within the time (if any) prescribed by the particular act requiring it, which is usually six lunar months, to be computed exclusively of the day of the date of the deed (a).

Enrolment.

So where a fine or recovery is to be levied or suffered, the purchaser's solicitor should lose no time in completing those assurances, particularly if, in the case of a fine, it has not been previously acknowledged (b).

Fine.

And if the estate of the vendor be a special tail, that is to say, an estate limited to him and the heirs of his body by his then wife, and not the heirs of his body in general, this is more particularly necessary, for in the event of his wife's decease he would have an estate tail after possibility of issue extinct, which is not barrable, and a contract for sale (unless it be an equitable estate) will not bind his issue. A recovery or fine, however, (as the case may require) suffered or levied before failure of issue, will acquire the fee simple, although there should be no issue afterwards, and enable him to make a good title to the purchaser (c).

(a) When enrolment is necessary, it will be mentioned at the foot of such of the ensuing presents as may require it.

(b) And see *post*, Vol. II. No. XXXI. p. 11, n. (2).

(c) See 2 Vern. 633—702.

PURCHASES.

*Duty of
Purchaser's
Solicitor.*

Alterations after
execution.

It has not unfrequently been within my observation that an alteration has been made in a deed after its engrossment and execution by some of the material parties, and the re-sealing and re-delivery by those parties has been considered as sufficient to renovate the deed; but this is erroneous, for after a deed has taken effect by execution, the interest of the party executing it is gone from him, and a re-execution will be nugatory (a); and even though it be to set right a mere clerical mistake, it will be the same, for a deed cannot be altered after it has been once perfected (b). If, therefore, an alteration, by way of correction, be necessary, it must be made by indorsement on the deed, which if it do not alter the purport or scope of the deed, but only be for correcting an error originating from mistake or inadvertency, will not, it is said, require any additional stamp, unless by occasioning an increase of the number of folios (c).

Detached re-
marks as to dif-
ferent species
of property.

In perusing the above remarks, it is all along to be borne in mind (as was before mentioned) that they are made solely with a reference to a contract for the sale or purchase of a *freehold estate of inheritance in possession*. But an agreement may be made for the sale or purchase of a *copyhold* or *leasehold* estate, an estate in *remainder* or *reversion*, of *equitable* interests, of *tithes*, or other incorporeal hereditaments, &c. all of which require, either in addition to or in contradistinction from the preceding observations, some directions or suggestions appli-

(a) See *Perroll v. Perroll*, 14 East. 423.

(b) And see *ex parte Thompson*, 9 Ves. jun. 207. *Burrows' case*, *ibid.* *Clayton v. Gresham*, *ibid.*

(c) See the cases last recited.

cable peculiarly to themselves. These may be expected to be found subjoined to the respective precedents given of such contracts; but as one or other of these kinds of property are frequently comprised in a contract for, or conveyance of freeholds, in possession, I shall here add such detached observations relative to these as do not occur to me to have been already or subsequently noticed.

PURCHASES.

*Duty of
Purchaser's
Solicitor.*

Where the lands were formerly copyhold, and a title is derived under an enfranchisement, it is necessary that the title of the lord of the manor as well as of the vendor should be investigated, as if his title were not good he could not release the services or otherwise confer upon the tenant a right to the freehold, and any incumbrance upon the freehold would upon the extinguishment of the copyhold tenure fall upon the enfranchised lands (a); and yet as the copyholder before enfranchisement has a customary *inheritance*, the lord could, it is presumed, do no more than incumber the services or incidental profits (b).

Copyholds. enfranchised.

And similar observations seem applicable to lands holden in ancient demesne on their being enfranchised or discharged from the services incident to them (c).

Ancient demesne.

It appears to be now settled, although long doubted and contested, that on the purchase of leaseholds an abstract may be required of the title of the lessor, i. e. of him who granted the first or original lease, through which the vendor claims (d): for unless the title of the lessor was such as to enable him to grant the lease in question, the lessee and all claiming under him are of course liable to be evicted by the person entitled in reversion, and the purchaser of a beneficial lease, whether by payment of a sum down or by the expenditure of money in build-

Leaseholds.

(a) 3 Prest. Abstr. 232.

(b) Vid. 1 Prest. Abstr. 302.

(c) Ibid. 304.

(d) Deverell v. Lord Bolton, 18 Ves. 505.

PURCHASES. ings or other improvements upon the land, has as much at stake, and is consequently entitled to the same safeguards as the purchaser of an estate of any longer duration than a term; there is, however, it should seem, an exception in the case of leases granted by ecclesiastical or other corporate bodies, whose notorious length of possession and the general integrity of dealing, in bodies of this description, are generally trusted to as a sufficient guarantee that the title is either free from defect, or that any defect which may exist will be removed if discovered.

*Duty of
Purchaser's
Solicitor.*

And where leasehold premises are contracted to be sold by a legatee, proof must be adduced of the executors assenting to the bequest, as every chattel interest vests in the executors, notwithstanding it may be specifically given, and is subject to the testator's debts; and so must it also be shown, even where the executor or administrator is party, that the will was proved or letters of administration granted, in the proper ecclesiastical courts, without which the title of such executor or administrator will be defective.

And where the lease is made in consideration of the surrender of a former lease, the reference made to such lease leads to the necessity of investigating the title of the lessor to such lease and of the mesne assignments, as any incumbrance upon them would attach upon the new lease (*a*). And the purchaser's solicitor should attend to the time of the surrender being made; as the act 32 Hen. VIII. c. 28. requires, in order to the validity of the new lease, that the old one should be surrendered or determined within a year from the making of the new lease (*b*).

The surrender of a term of years will in some cases be pre-

(*a*) See *Coppin v. Fernyhaugh*, 2 Brow. Ch. Ca. 991. *Nesbit v. Tredennick*, 1 Ball and Beat. 99.

(*b*) And see Co. Lit. 44 b.

sumed, as where the title to the inheritance has gone in opposition to the trusts of the term, or where a mortgage term has been dormant for twenty years or upwards (*a*); such presumption is not however to be admitted without great caution and scrupulous consideration of the circumstances on which it is founded, as it has not unfrequently happened that after such presumption has been acted upon, the term has been proved to be in existence (*b*).

PURCHASES.

*Duty of
Purchaser's
Solicitor.*

Lastly it is to be noticed that not only common judgments (as has been already mentioned) but statutes or crown debts are not a lien on the leaseholds of a cognizor till execution has been actually sued out (*c*); nor is an equity of redemption in a term for years bound by execution at all (*d*).

All therefore that the solicitor for the purchaser has to do as to leaseholds is to be assured that no execution has been delivered to the sheriff on a *judgment*; that no *liberate* has been awarded on the *statute*; and that no extent has been tested on a debt to the crown (*e*).

And if the lands are stated to be holden in ancient demesne, search must be made for them in the Book of Domesday (kept at his Majesty's Exchequer); for ancient demesne being a tenure by which all manors belonging to the crown in the time of Wm. I. were holden, and the names of them having, on a general survey then made of all the manors in the kingdom, been inserted in the Domesday Book, they will, if of that tenure, be there found under the denomination of *Terra regis* (*f*).

Tenure by
Domesday
book.

(*a*) *Good Title v. Jones*, 7 Durnf. and E. 47. *Doe v. Calvert*, 5 Taunt. 170.

(*b*) And see *Doe dem. Graham v. Scott*, 11 East. 478. *Cholmondeley v. Clincon*, 2 Mer. 171.

(*c*) *Fleetwood's case*, 8 Rep. 91, 171. *Burden v. Kennedy*, 3 Atk. 379.

(*d*) 3 Atk. 379. *Lyster v. Dolland*, 1 Ves. jun. 431.

(*e*) 3 Prest. Abstr. 232.

(*f*) *Kitch.* 93. 1 Salk. 57.

*Stamp Act,
55 Geo. III.
c. 184.*

AN ABSTRACT

OF

The STAMP ACT of 55 Geo. III. c. 184, so far as it imposes
Duties on CONVEYANCES and other ASSURANCES to
PURCHASERS (1).

Duties to be
paid, as speci-
fied in schedule
annexed.

By this act it is enacted, (in relation to purchase deeds),

Sec. 2. That there shall be raised, levied, and paid, unto and for the use of his Majesty, his heirs and successors, in and throughout the whole of Great Britain, for and in respect of the several instruments, matters, and things, mentioned and described in the Schedule hereunto annexed (except those standing under the head of Exceptions), or for or in respect of the vellum, parchment, or paper, upon which such instruments, matters, and things, or any of them shall be written or printed, the several duties or sums of money set down in figures against the same respectively, or otherwise specified and set forth in the same Schedule; and that the yearly per-centage duty on insurances from loss by fire, therein mentioned, shall commence and take place from and after the twenty-eighth day of September, one thousand eight hundred and fifteen; and that all the other duties therein mentioned shall commence and take place from and after the thirty-first day of August, one thousand

(1) The perpetual occasion a solicitor has to ascertain the proper stamp to be impressed upon deeds, and the inconvenience of resorting to the statute books for this purpose, has induced me to prefix to each class of assurances comprised in this work an abstract of so much of the last stamp act as relates to such particular assurances; and which, by means of the marginal notes added to the schedules, will I hope be found more convenient to refer to for information than the act itself.

eight hundred and fifteen; and that the said Schedule, and all the provisions, regulations, and directions therein contained, with respect to the said duties, and the instruments, matters, and things charged therewith, shall be deemed and taken to be part of this act, and shall be read and construed as if the same had been inserted herein at this place, and shall be applied, observed, and put in execution accordingly.

PURCHASES.

Stamp Act,
55 Gen. III.
c. 184.

Sec. 8 declares, That the provisions of all former acts relative to prior duties of the same kind, shall be in force so far as they are applicable in all cases not provided for by this act, and not superseded by or inconsistent therewith (1).

Provisions of former acts to be in force.

Sec. 9. That the provisions and regulations of former acts, relating to agreements, shall be applied only to such agreements as are hereby charged with a duty of one pound; and that the agreements hereby charged with a duty of one pound fifteen shillings shall be subject and liable to the same provisions and regulations as deeds hereby charged with a like duty.

Provisions of former acts, respecting agreements, to be applied only to those charged with 1*l*.

Sec. 10. That from and after the passing of this act, all instruments for or upon which any stamp or stamps shall have been used of an improper denomination or rate of duty, but of equal or greater value in the whole with or than the stamp or stamps which ought regularly to have been used thereon, shall nevertheless be deemed valid and effectual in the law; except in cases where the stamp or stamps used on such instruments

Instruments having wrong stamps, but of sufficient value, to be valid.

Except the stamp specifically appropriated.

(1) What a pity it is that the legislature, when making new enactments, should keep on foot the provisions of former acts on the same subject! How easy would it be, and how much preferable, to insert in the new act all such clauses in the former acts as it is intended shall remain in force, and repeal those acts altogether! If this practice be much longer continued, it will be wholly impossible to know the statute laws of the realm.

PURCHASES. shall have been specially appropriated to any other instrument, by having its name on the face thereof.

Stamp Act,
55 Geo. III.
c. 184.

Conveyances
of property con-
tracted to be
sold before
April 12, 1808,
exempted from
ad valorem duty.

Sec. 30. That any conveyances to be made after the thirty-first day of August, one thousand eight hundred and fifteen, of lands or other property contracted to be sold prior to the twelfth day of April, one thousand eight hundred and eight, which, under the provisions of the said act of the forty-eighth year of his Majesty's reign, would have been exempted from the *ad valorem* duty thereby granted, shall be exempted from the *ad valorem* duty imposed by this act, and shall be charged with the ordinary duty of one pound fifteen shillings in lieu thereof, together with the progressive duty of one pound five shillings, if any progressive duty shall be chargeable thereon, under and subject nevertheless to the conditions and regulations prescribed by the said last-mentioned act (1).

Release and
conveyances of
annuities, &c.
exempted from
the *ad valorem*
duty on the re-
purchase.

Sec. 31 provides, That the releases and other conveyances of annuities or rent charges made in the original grant thereof, subject to be redeemed or repurchased, shall, on the repurchase thereof, be exempted from the *ad valorem* duty hereby imposed on conveyances on the sale of any property, and shall be charged only with the ordinary duty on deeds or instruments of the like kind, not upon a sale.

(1) It would seem to be unnecessary that this clause should be here set out; but so prevalent always is the spirit of contest, that many conveyances, it is feared, still remain to be executed in pursuance of contracts entered into prior to the year mentioned in the act.

PURCHASES.

*Stamp Act,
55 Geo. III.
c. 184.*

SCHEDULE.

The Schedule referred to by the preceding Act (so far as concerns PURCHASES) is as follows:

AGREEMENT, or any minute or memorandum of an agreement, made in England, under hand only, or made in Scotland without any clause of registration (*and not otherwise charged in this Schedule, nor expressly exempted from all stamp duty*), where the matter thereof shall be of the value of 20*l.* or upwards, whether the same shall be only evidence of a contract, or obligatory upon the parties from its being a written instrument, together with every schedule, receipt, or other matter put or indorsed thereon or annexed thereto;

£. s. d.

Where the same shall not contain more than 1,080 words (being the amount of fifteen common law folios or sheets of seventy-two words each) 1 0 0

And where the same shall contain more than 1,080 words 1 15 0

And for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of . 1 5 0

h 2

PURCHASES. AGREEMENT—continued.

*Stamp Act,
55 Geo. III.
c. 184.*

Provided always, that where divers letters shall be offered in evidence to prove any agreement between the parties who shall have written such letters, it shall be sufficient if any one of such letters shall be stamped with a duty of 1*l.* 15*s.* although the same shall in the whole contain twice in number of 1,080 words or upwards.

Exemptions from the preceding and all other stamp duties.

Label (1), slip, or memorandum, containing the heads of insurances to be made by the corporations of the Royal Exchange Assurance, and London Assurance; or by the corporations of the Royal Exchange Assurance of houses and goods from fire, and London Assurance of houses and goods from fire.

Memorandum or agreement for granting a lease or tack, at rack rent, of any messuage, land or tenement, under the yearly rent of five pounds.

Memorandum or agreement for the hire of any labourer, artificer, manufacturer, or menial servant.

Memorandum, letter, or agreement, made for or relating to the sale of any goods, wares, or merchandise.

Memorandum or agreement made between the master and mariners of any ship or vessel, for wages, on any voyage coastwise from port to port in Great Britain.

Letters containing any agreement (not before exempted) in respect of any merchandise, or evidence of such an agreement, which shall pass by the post, between merchants or other persons carrying on trade or commerce, in Great Britain, and residing and actually being, at the time of sending such letters, at the distance of fifty miles from each other.

See also the general exemptions, post, p. cxiii.

(1) Some of the exemptions in this schedule appear to be little connected with PURCHASE DEEDS, the only subject of the present volume; but I have been careful not to mutilate any part of an act, which, in its entire state, is very difficult to be understood.

APPOINTMENT—continued.

APPOINTMENT, in execution of a power, of land or other property, real or personal, or of any use or interest therein, where made by any writing, not being a deed or will . . .

£. s. d. **PURCHASES.**

*Stamp Act,
55 Geo. III.
c. 184.*

1 15 0

And where the same, together with any schedule, receipt, or other matter put or indorsed thereon, or annexed thereto, shall contain 2,160 words (being the amount of thirty common law folios, or sheets of seventy-two words each) or upwards, then for every entire quantity of 1,080 words (or fifteen common law folios or sheets) contained therein, over and above the first 1,080 words, a further *pro-*
gressive duty of . . .

1 5 0

If made by deed.—See DEED.

ASSIGNATION or **ASSIGNMENT** of any property, real or personal, heritable or moveable, *not otherwise charged in this schedule, nor expressly exempted from all stamp duty* . . .

1 15 0

And where the same, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards then, for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *pro-*
gressive duty of . . .

1 5 0

BARGAIN and **SALE** (or lease) for a year, for vesting the possession of lands or other hereditaments in England, and enabling the bargainee to take a release of the freehold or inheritance, upon the sale or mortgage thereof;

Where the purchase or consideration money

PURCHASES. BARGAIN and SALE— <i>continued.</i>		£.	s.	d.
<hr/> Stamp Act, 55 Geo. III. c. 184. <hr/>	expressed in the release shall not amount to 20 <i>l.</i>	0	10	0
	And where the same shall amount to 20 <i>l.</i> and not amount to 50 <i>l.</i>	0	15	0
	And where the same shall amount to 50 <i>l.</i> and not amount to 150 <i>l.</i>	1	0	0
	And where the same shall amount to 150 <i>l.</i> or upwards	1	15	0
	BARGAIN and SALE (or lease) for a year, upon any other occasion	1	15	0
	BARGAIN and SALE (to be enrolled) of any estate of freehold, in lands or other hereditaments in England, upon the sale thereof, or by way of mortgage.—See CONVEYANCE.—MORTGAGE.			
	BARGAIN and SALE (to be enrolled) of any estate of freehold, in lands or other hereditaments in England, upon any other occasion than the mortgage or sale thereof	5	0	0
	And where any such bargain and sale as aforesaid, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further <i>progressive</i> duty of	1	5	0

Exemptions from the preceding duty.

Bargains and sales, made by Commissioners to the Assignees of Bankrupts, which are to pay a duty, only as deeds in general.

CONVEYANCE, whether grant, disposition, lease, assignment, transfer, release, renunciation, or of any other kind or description whatsoever, *upon the sale* of any lands, tenements, rents,

CONVEYANCE—*continued*.

PURCHASES.

annuities, or other property, real or personal, heritable or moveable, or of any right, title, interest, or claim in, to, out of, or upon any lands, tenements, rents, annuities, or other property; that is to say, for or in respect of *the principal or only deed, instrument, or writing*, whereby the lands and other things sold shall be granted, leased, assigned, transferred, released, renounced, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction;

Stamp Act,
55 Geo. III.
c. 184.

	£.	s.	d.
Where the purchase or consideration money therein or thereupon expressed shall not amount to 20 <i>l</i> .	0	10	0
And where the same shall amount to 20 <i>l</i> . and not amount to 50 <i>l</i> .	1	0	0
And where the same shall amount to 50 <i>l</i> . and not amount to 150 <i>l</i> .	1	10	0
And where the same shall amount to 150 <i>l</i> . and not amount to 300 <i>l</i> .	2	0	0
And where the same shall amount to 300 <i>l</i> . and not amount to 500 <i>l</i> .	3	0	0
And where the same shall amount to 500 <i>l</i> . and not amount to 750 <i>l</i> .	6	0	0
And where the same shall amount to 750 <i>l</i> . and not amount to 1,000 <i>l</i> .	9	0	0
And where the same shall amount to 1,000 <i>l</i> . and not amount to 2,000 <i>l</i> .	12	0	0
And where the same shall amount to 2,000 <i>l</i> . and not amount to 3,000 <i>l</i> .	25	0	0
And where the same shall amount to 3,000 <i>l</i> . and not amount to 4,000 <i>l</i> .	35	0	0
And where the same shall amount to 4,000 <i>l</i> . and not amount to 5,000 <i>l</i> .	45	0	0
And where the same shall amount to 5,000 <i>l</i> . and not amount to 6,000 <i>l</i> .	55	0	0

PURCHASES. CONVEYANCE— <i>continued</i> .		£.	s.	d
<div>Stamp Act, 55 Gen. III. c. 184.</div>	And where the same shall amount to 6,000 <i>l</i> .			
	and not amount to 7,000 <i>l</i>	65	0	0
	And where the same shall amount to 7,000 <i>l</i> .			
	and not amount to 8,000 <i>l</i>	75	0	0
	And where the same shall amount to 8,000 <i>l</i> .			
	and not amount to 9,000 <i>l</i>	85	0	0
	And where the same shall amount to 9,000 <i>l</i> .			
	and not amount to 10,000 <i>l</i>	95	0	0
	And where the same shall amount to 10,000 <i>l</i> .			
	and not amount to 12,500 <i>l</i>	110	0	0
	And where the same shall amount to 12,500 <i>l</i> .			
	and not amount to 15,000 <i>l</i>	130	0	0
	And where the same shall amount to 15,000 <i>l</i> .			
	and not amount to 20,000 <i>l</i>	170	0	0
	And where the same shall amount to 20,000 <i>l</i> .			
	and not amount to 30,000 <i>l</i>	240	0	0
	And where the same shall amount to 30,000 <i>l</i> .			
	and not amount to 40,000 <i>l</i>	350	0	0
Feoffment, or bargain and sale.	And where the same shall amount to 40,000 <i>l</i> .			
	and not amount to 50,000 <i>l</i>	450	0	0
	And where the same shall amount to 50,000 <i>l</i> .			
	and not amount to 60,000 <i>l</i>	550	0	0
	And where the same shall amount to 60,000 <i>l</i> .			
	and not amount to 80,000 <i>l</i>	650	0	0
	And where the same shall amount to 80,000 <i>l</i> .			
	and not amount to 100,000 <i>l</i>	800	0	0
	And where the same shall amount to			
	100,000 <i>l</i> . or upwards	1,000	0	0
And where any freehold lands or hereditaments in England shall be conveyed by a deed of feoffment, with or without any letter or letters of attorney therein contained, to deliver or receive seisin, or by a deed of <i>bargain and sale enrolled</i> ; such deed of feoffment or bargain and sale, unless accompanied with a lease and release, shall be charged with a <i>further</i> duty as follows :				

CONVEYANCE—continued.	£.	s.	d.	PURCHASES.
If the purchase or consideration money therein or thereupon expressed shall be under 20℥.	0	10	0	<hr/> Stamp Act, 55 Geo. III. c. 184. <hr/>
If it shall amount to 20℥. and not amount to 50℥.	0	15	0	
If it shall amount to 50℥. and not amount to 150℥.	1	0	0	
If it shall amount to 150℥. or upwards	1	15	0	
But if there shall be both a feoffment and a bargain and sale inrolled, then the said further duty shall not attach on either.				Feoffment and bargain and sale.
Note.—The purchase or consideration money is to be truly expressed and set forth in words at length, in or upon every such principal or only deed or instrument of conveyance.				Consideration to be expressed.
And where any lands or other property, of different tenures or holdings, or held under different titles, contracted to be sold at one entire price for the whole, shall be conveyed to the purchaser in separate parts or parcels, by different deeds or instruments, the purchase or consideration money shall be divided and apportioned in such manner as the parties shall think fit, so that a distinct price or consideration for each separate part or parcel may be set forth in or upon the principal or only deed or instrument of conveyance relating thereto; which shall be charged with the said <i>ad valorem</i> duty in respect of the price or consideration money therein set forth.				Lands of different tenures sold at one sum.
And where any lands or other property, contracted to be purchased by two or more persons jointly, or by any person for himself and others, or wholly for others, at one entire price for the whole, shall be conveyed, in parts or parcels, by separate deeds or instruments, to the persons for whom the same shall be purchased, for distinct parts or shares of the purchase money; the principal or only deed or instrument of conveyance, of each separate part or parcel, shall be charged with the said <i>ad valorem</i> duty, in respect of the sum of money therein specified as the consideration for the same. But if separate parts or parcels of such lands or other property shall be conveyed to or to the use of or in trust for different				Joint purchasers.

PURCHASES. CONVEYANCE—continued.

Stamp Act,
55 Geo. III.
c. 184.

persons, in and by one and the same deed or instrument, then such deed or instrument shall be charged with the said *ad valorem* duty, in respect of the aggregate amount of the purchase or consideration monies therein mentioned to be paid or agreed to be paid, for the lands or property thereby conveyed.

Sale by sub-
purchaser.

And where any person, having contracted for the purchase of any lands or other property, but not having obtained a conveyance thereof, shall contract to sell to any other person, and the same shall in consequence be conveyed immediately to the sub-purchaser; the principal or only deed or instrument of conveyance shall be charged with the said *ad valorem* duty, in respect of the purchase or consideration money therein mentioned to be paid, or agreed to be paid, by the sub-purchaser.

Sub-purchaser
selling in
parcels.

And where any person, having contracted for the purchase of any lands or other property, but not having obtained a conveyance thereof, shall contract to sell the whole or any part or parts thereof, to any other person or persons, and the same shall in consequence be conveyed, by the original seller, to different persons, in parts or parcels; the principal or only deed or instrument of conveyance, of each part or parcel thereof, shall be charged with the said *ad valorem* duty, in respect only of the purchase or consideration money which shall be therein mentioned to be paid or agreed to be paid for the same, by the person or persons, to whom or to whose use or in trust for whom the conveyance shall be made, without regard to the amount of the original purchase money.

Sub-purchasers
to be within
48 Geo. 3.

And in all cases of such sub-sales as aforesaid, the sub-purchasers, and the persons immediately selling to them, shall be deemed and taken to be the purchasers and sellers, within the intent and meaning of the provisions and regulations of the aforesaid act of the forty-eighth year of his majesty's reign [chap. 149], relating to the *ad valorem* duties on conveyances on the sale of property thereby imposed, and which are to be observed and enforced with regard to the said *ad valorem* duties hereby granted.

CONVEYANCE—continued.

But where any sub-purchaser shall take an actual conveyance of the interest of the person immediately selling to him, which shall be chargeable with the said *ad valorem* duty, in respect of the purchase or consideration money paid or agreed to be paid by him, and shall be duly stamped accordingly; any deed or instrument of conveyance to be afterwards made to him, of the property in question, by the original seller, shall be exempted from the said *ad valorem* duty, and be charged only with the ordinary duty on deeds or instruments of the same kind not upon a sale.

And where any lands or other property separately contracted to be purchased of different persons, at separate and distinct prices, shall be conveyed to the purchaser, or as he shall direct, in and by one and the same deed or instrument; such deed or instrument shall be charged with the said *ad valorem* duty, in respect of the aggregate amount of the purchase or consideration monies, therein mentioned to be paid or agreed to be paid for the same.

And where any lands, or other property, shall be sold and conveyed, in consideration, wholly or in part, of any sum of money charged thereon by way of mortgage, wadset, or otherwise, and then due and owing to the purchaser, or shall be sold and conveyed, subject to any mortgage, wadset, bond or other debt, or to any gross or entire sum of money, to be afterwards paid by the purchaser, such sum of money or debt shall be deemed the purchase or consideration money, or part of the purchase or consideration money, as the case may be, in respect whereof the said *ad valorem* duty is to be paid.

And to prevent doubts, respecting what shall be deemed the principal deed or instrument of conveyance, in certain cases, it is hereby declared: That where any lands or hereditaments in *England* shall be conveyed by bargain and sale inrolled, and also by lease and release, or feoffment, with or without any such letter or letters of attorney therein contained as afore-said, the release or feoffment shall be deemed the principal deed; and the bargain and sale shall be charged only with

PURCHASES.

Stamp Act,
55 Geo. III.
c. 184.

Sub-purchaser
taking from
first purchaser.

Joint vendors.

Consideration,
mortgage
money.

Which to be
the prin-
cipal of several
instruments.

PURCHASES. CONVEYANCE—continued.

Stamp Act,
55 Geo. III.
c. 184.

the duty hereby imposed on deeds in general.—(See DEED.)—
But the same shall not be inrolled or be available, unless also
stamped for testifying the payment of the *ad valorem* duty on
the release or feoffment.

Feoffment and
lease and re-
lease.

And where any lands or hereditaments shall be conveyed by
lease and release, and also by feoffment, with or without any
such letter or letters of attorney therein contained as afore-
said; the release shall be deemed the principal deed; and
the feoffment shall be charged only with the duty hereby im-
posed on deeds in general.—(See DEED.)—But the same shall
not be available, unless also stamped for testifying the pay-
ment of the *ad valorem* duty on the release.

Bargain and
sale of copy-
holds.

And where any copyhold or customary estate shall be con-
veyed, by a deed of bargain and sale, by the commissioners
named in a commission of bankrupt, or by executors or others,
by virtue of a power given by will, or by act of parliament,
or otherwise, where a surrender shall not be necessary, the
deed of bargain and sale shall be deemed the principal instru-
ment.

Surrender of
copyhold.

And in other cases of copyhold or customary estates, the sur-
render or voluntary grant, or the memorandum thereof re-
spectively, if made out of court, or the copy of court roll of
the surrender or voluntary grant, if made in court, shall be
deemed the principal instrument.

Copies of court
roll.

And copies of court roll, made after the thirty-first day of Au-
gust, 1815, of surrenders and voluntary grants made in court
before or upon that day, and subsequent to the 10th day of
October, 1808, shall be charged with the said *ad valorem*
duties. But copies of court roll, of surrenders and voluntary
grants made before or upon the 10th day of October, 1808,
shall not be liable thereto.

Copyholds for
life.

And grants, and copies of court roll of grants, of copyhold or
customary estates for a life or lives, are to be charged, as
well as those for any greater interest.

Scotland.

And where in *Scotland* there shall be a disposition or as-
signation, executed by the seller, and any other instrument

CONVEYANCE—*continued*.

PURCHASES.

or instruments, writing or writings, to complete the title, the disposition or assignation shall be deemed the principal instrument.

*Stamp Act,
55 Geo. III.
c. 184.*

And where, upon the sale of any annuity or other right not before in existence, the same shall not be created by actual grant or conveyance, but shall only be secured by bond, warrant of attorney, covenant, contract, or otherwise; the bond or other instrument, by which the same shall be secured, or some one of such instruments, if there be more than one, shall be deemed and taken to be liable to the same duty, as an actual grant or conveyance.

Annuity secured by bond only.

And in the case of leases or tacks, where a yearly rent of 20*l.* or upwards shall be reserved, as part of the consideration for the same, there shall be charged a further duty:—for which see Title, LEASE.

Part of consideration a rent.

£. s. d.

And where the principal or only deed or instrument of conveyance, together with any schedule, receipt, or other matter put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further progressive duty of

1 0 0

And where there shall be several deeds, instruments, or writings for completing the title to the property sold; such of them as are not liable to the said *ad valorem* duty shall be charged with the duty, to which the same may be liable, under any general or particular description of such deeds, instruments, or writings contained in this schedule.

Several assurances.

And where, in any case not hereby expressly provided for, of several deeds, instruments, or writings, a doubt shall arise which is the principal, it shall be lawful for the parties to determine for themselves which shall be so deemed, and to pay the said *ad valorem* duty thereon accordingly; and, if necessary, the other deeds, instruments, or writings, on which

Option as to principal instrument.

PURCHASES. CONVEYANCE—continued.

*Stamp Act,
55 Geo. III.
c. 184.*

Duplicates of
deeds.

the doubt shall have arisen, shall be stamped with a particular stamp for denoting or testifying the payment of the *ad valorem* duty; upon all the deeds or instruments being produced, and appearing to be duly stamped in other respects.

And where there shall be duplicates of any deed or instrument, chargeable with the said *ad valorem* duty, exceeding 2*l.*, one of them only shall be charged therewith, and the other or others shall be charged with the ordinary duty on deeds or instruments of the same kind not upon a sale; and on the whole being produced duly stamped as hereby required, the latter shall also be stamped with a particular stamp for denoting or testifying the payment of the said *ad valorem* duty.

Conveyance
containing
other matter.

And where any deed or instrument, operating as a conveyance on the sale of any property, shall operate also as a conveyance of any other than the property sold by way of settlement, or for any other purpose, or shall also contain any other matter or thing besides what shall be incident to the sale and conveyance of the property sold, or relate to the title thereto; every such deed or instrument shall be charged in addition to the duty to which it shall be liable as a conveyance on the sale of property, and to any progressive duty to which it may also be liable, with such further stamp duty as any separate deed, containing the other matter, would have been chargeable with, exclusive of the progressive duty.

*Exemptions from the preceding duties on conveyances upon the
sale of lands, &c.*

All surrenders and other instruments, relating only to copyhold or customary estates, whose clear yearly value shall not exceed twenty shillings, but which are hereinafter otherwise charged.

All transfers of shares in the stock and funds of the Governor and Company of the Bank of England, and of the South-Sea and East India Companies, but which are hereinafter otherwise charged.

All leases and tacks in consideration of a fine or grassum, for a

CONVEYANCE—*continued.*

life or lives not exceeding three, or for a term of years determinable with a life or lives not exceeding three, by whomsoever granted.

PURCHASES.

*Stamp Act,
55 Geo. III.
c. 184.*

All leases in consideration of a fine for a term absolute, not exceeding twenty-one years, granted by ecclesiastical corporations, aggregate or sole.

And all voluntary grants made by the lord or lady of any manor of any copyhold, or customary lands or hereditaments, for a life or lives, for a pecuniary consideration, and the copies of court roll of such voluntary grants.

All which leases, tacks, grants, and copies are hereinafter charged with ordinary duty.

Exemptions from the preceding and all other stamp duties, except the duty on the receipt for the consideration money.

Conveyances of rents purchased under the act of the 34th year of his majesty's reign, c. 75, for the better management of the land revenue of the crown, and for the sale of fee farm and other unimproveable rents, upon subsequent sales thereof by the purchasers or their heirs or assigns, to the owners of the lands or other hereditaments, out of which the same are payable; where the consideration money to be paid on such subsequent sales shall not exceed the sum of 10*l*.

Exemptions from the preceding and all other stamp duties.

All transfers of shares in any of the government or parliamentary stocks or funds.

For other exemptions, see the titles, GRANT, LEASE, and at the end of this part of the Schedule.

CONVEYANCE of lands and rents belonging to the crown. Crown lands.

—See GRANT.

CONVEYANCE of the equity or right of redemption or reversion of lands or other property, to a purchaser, in the same deed with a mortgage, wadset, or other security made thereupon.—See MORTGAGE.

Equity of redemption.

PURCHASES.	CONVEYANCE— <i>continued.</i>	£. s. d.		
<div>Stamp Act, 55 Geo. III. c. 184.</div>	CONVEYANCE of any kind whatever, <i>not otherwise charged in this schedule, nor expressly exempted from all stamp duty</i>	1	15	0

And where the same, together with any schedule, receipt, or other matter put or indorsed thereon, or annexed thereto, shall contain 2,160 words, or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of 1 5 0

COPY, attested to be a true copy, in the form which hath been commonly used for that purpose, or in any other manner authenticated or declared to be a true copy, or made for the purpose of being given in evidence as a true copy, of any agreement, contract, bond, deed, or other instrument of conveyance, or any other deed whatever, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, or of any part thereof respectively.

Where such a copy shall be made for the security or use of any person, being a party to, or taking any benefit or interest immediately under such agreement, contract, bond, deed, or other instrument } *The same duty or duties as for the original instrument.*

And where any such copy shall be made for the security or use of any person, not being a party to, or taking any benefit or interest immediately, under such agreement, contract, bond, deed, or other instrument 0 1 0

And for every entire quantity of 720 words contained therein, over and above the first 720 words, a further *progressive* duty of 0 1 0

And all copies, which shall at any time be offered in evidence, shall be deemed to have been made for that purpose.

Exemptions from the preceding and all other stamp duties.

PURCHASES.

All copies attested or authenticated as aforesaid, which shall be made for the private use only of any person having the custody of the original instruments, or of his or her counsel, attorney, or solicitor.

*Stamp Act,
55 Geo. III.
c. 184.*

£. s. d.

COPY, attested or authenticated as aforesaid, or made for the purpose of being given in evidence as a true copy of any original will, testament, or codicil; or of the probate or probate copy of any will or codicil; or of any letters of administration; or of any confirmation of a testament testamentary or dative, or of any part thereof respectively 0 1 0

And for every entire quantity of 720 words, contained in any such copy, over and above the first 720 words, a further *progressive* duty of 0 1 0

And all copies which shall at any time be offered in evidence, shall be deemed to have been made for that purpose.

Office COPY or extract of any will or codicil, deposited in any ecclesiastical court in England 0 1 0

And for every entire quantity of 90 words, contained in any such copy or extract, over and above the first 90 words, a further *progressive* duty of 0 1 0

COPY or extract of any memorial, or of the register of any memorial, registered pursuant to any act of parliament, made or to be made, for the public registering of deeds and conveyances in England 0 5 0

And for every piece of vellum, parchment, or paper, upon which any such copy or extract shall be written, after the first, a further *progressive* duty of 0 5 0

PURCHASES. COPY—*continued.*

£. s. d.

Stamp Act,
55 Geo. III.
c. 184.

COPY or extract of any deed, or of any other instrument *not falling under the description of law proceedings*, which shall be made or taken from the rolls or records of any of his majesty's courts at Westminster

0 2 0

And for every piece of vellum, parchment, or paper, upon which any such copy or extract shall be written, after the first, a further *progressive* duty of

0 2 0

Attested COPY or extract, of any deed, instrument, or writing, given out from any public register, or from the books or records of any court in Scotland, *and not otherwise charged under the head of law proceedings*

0 2 6

And where the same shall contain more than 600 words, then for every entire quantity of 600 words contained therein, over and above the first 600 words, a further *progressive* duty of

0 2 6

And for any less quantity of words contained therein, over and above the first 600 words, or over and above any second, third, or other full quantity of 600 words, a *further* duty of

0 2 6

Exemptions from the preceding and all other stamp duties.

Certified copies of proceedings and interlocutors required or authorised in cases of appeal to the House of Lords.

Copies or extracts of protests, upon bills or promissory notes, for any sum under forty shillings sterling.

Extracts of commissions of persons as delegates or representatives to the general assembly, or to any presbytery or church court, in Scotland; and of commissions of delegates to the convention of royal burghs; and of commissions of delegates from any royal burgh for the election of members of parliament.

COPY—*continued.*

PURCHASES.

COPYHOLD estates; and CUSTOMARY estates, passing by surrender and admittance, or by admittance only, and not by deed; INSTRUMENTS relating thereto, *not otherwise charged under the head of mortgage, or of conveyance upon the sale of lands: viz.*

*Stamp Act,
55 Geo. III.
c. 184.*

	£	s.	d.
Any SURRENDER made out of court, or the memorandum thereof; where the clear yearly value of the estate shall exceed twenty shillings	1	0	0
And where the same shall not exceed twenty shillings	0	5	0

See also CONVEYANCE upon the sale of lands, &c.

Any ADMITTANCE out of court, or the memorandum thereof; where the clear yearly value of the estate shall exceed twenty shillings	1	0	0
And where the same shall not exceed twenty shillings	0	5	0

And where both a surrender and admittance, or more than one surrender or admittance, or the memorandum thereof, shall be contained in the same piece of vellum, parchment, or paper, whether upon a sale, mortgage, or other occasion, the proper duty shall be paid, in respect to each surrender and each admittance.

And where any surrender or admittance, or the memorandum thereof, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further <i>progressive</i> duty of	1	0	0
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PURCHASES.	COPY— <i>continued.</i>	£.	s.	d.
<hr/> <i>Stamp Act, 55 Geo. III. c. 184.</i> <hr/>	The COPY of COURT ROLL of any surrender made in court; where the clear yearly value of the estate shall exceed twenty shillings	1	0	0
	And where the same shall not exceed twenty shillings	0	5	0

See also CONVEYANCE upon the sale of lands, &c.

The COPY of COURT ROLL of any admittance in Court; where the clear yearly value of the estate shall exceed twenty shillings	1	0	0
And where the same shall not exceed twenty shillings	0	5	0

And where copies of both a surrender and admittance, or of more than one surrender or admittance, shall be contained in the same piece of vellum, parchment, or paper, whether upon a sale, mortgage, or other occasion, the proper duty shall be paid, in respect of each surrender and each admittance, except in the case of a recovery hereinafter provided for.

And where the copy of any such surrender or admittance, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further <i>progressive</i> duty of	1	0	0
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The COPY of COURT ROLL of the several surrenders, admittances, and other acts, which shall take place in court, for the purpose of perfecting a COMMON RECOVERY of any entailed copyhold or customary estate or estates, tenement or tenements, from the surrender to make a tenant of the præcipe, down to the admittance of the tenant in

COPY—continued.

tail, in fee, or to the admittance for life of the former tenant for life, with remainder to the tenant in tail, in fee, upon the surrender of the demandant, both inclusive; or from the surrender to make a tenant to the præcipe, inclusive, to the admittance of the tenant in tail, or tenant for life, otherwise than as aforesaid, or to the admittance of any other person, upon the surrender of the demandant, exclusive; where the clear yearly value of the estate shall exceed twenty shillings

£.	s.	d.	PURCHASES.
			<hr/> Stamp Act, 55 Geo. III. c. 184. <hr/>

Five times
1 0 0

And where the same shall not exceed twenty shillings

Five times
0 5 0

And if the copy of court roll of any other admittance or surrender, admittances or surrenders, shall be contained in the same piece of vellum, parchment, or paper, with the copy of court roll of the several surrenders, admittances, and other acts for the purpose aforesaid; the same shall be charged with such and the same duty or duties, as if the same had been written upon a separate piece of vellum, parchment, or paper, over and above the said duties hereby imposed on the copy of court roll of the recovery.

Any VOLUNTARY GRANT by the lord or lady, or steward, of any manor, made out of court, or the memorandum thereof, with or without admittance thereon; where the clear yearly value of the estate shall exceed twenty shillings

Twice
1 0 0

And where the same shall not exceed twenty shillings

Twice
0 5 0

See also CONVEYANCE upon the sale of lands, &c.

The COPY of COURT ROLL of any voluntary grant made in court, by the lord or lady, or steward of any manor with or without ad-

PURCHASES. COPY— <i>continued</i> .		£.	s.	d.
<hr/> <i>Stamp Act, 55 Geo. III. c. 184.</i> <hr/>	mittance thereon;—where the clear yearly value of the estate shall exceed twenty shillings	Twice	1	0 0
	And where the same shall not exceed twenty shillings	Twice	0	5 0

See also CONVEYANCE upon the sale of lands, &c.

And where any voluntary grant, or the memorandum, or copy of court roll thereof, together with any schedule, receipt, or other matter put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of 1 0 0

Any LICENCE to demise, or the memorandum thereof, if granted out of court; and the COPY of COURT ROLL of any licence to demise, if granted in court; where the clear yearly value of the estate shall exceed twenty shillings 1 0 0

And where the same shall not exceed twenty shillings 0 5 0

Exemptions from the preceding and all other stamp duties.

Original surrenders out of court, and copies of court roll of surrenders in court, to the uses of a will, or to a trustee for the uses or purposes of a will.

The court rolls or books of any manor, wherein the proceedings relating thereto shall be entered or minuted.

See also the general exemptions at the end of this part of the schedule.

£. s. d. PURCHASES.

*Stamp Act,
55 Geo. III.
c. 184.*

DECLARATION of any use or trust, uses or trusts, of or concerning any estate or property, real or personal, where made by any writing not being a deed or will, *not otherwise charged in this schedule*

1 15 0

And where the same, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of

1 5 0

If made by deed.—See DEED.

DEED of any kind whatever, *not otherwise charged in this schedule, nor expressly exempted from all stamp duty*

1 15 0

And where the same, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of

1 5 0

FEOFFMENT of lands or other hereditaments, in England, *not otherwise charged*

1 15 0

And where the same shall contain any letter or letters of attorney to deliver or receive seisin, a *further* duty of

1 15 0

And where the same, together with any such letter or letters of attorney, and any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards,

PURCHASES.		FEOFFMENT — <i>continued.</i>	£.	s.	d.
<hr/> <i>Stamp Act, 55 Geo. III. c. 184.</i> <hr/>		then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further <i>progressive</i> duty of	1	5	0
		MEMORIAL —to be ascertained pursuant to any act of parliament made or to be made for the public registering of deeds and conveyances in England	0	10	0
		And for every piece of vellum, parchment, or paper upon which any such memorial shall be written, after the first a further <i>progressive</i> duty of	0	10	0
		RELEASE and renunciation of lands or other property, real or personal, heritable or moveable, or of any right or interest therein; any deed or instrument of, <i>not otherwise charged in this schedule, nor expressly exempted from all stamp duty</i>	1	15	0
		And where the same, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further <i>progressive</i> duty of	1	5	0
SURRENDER upon the sale of lands or other property.— SEE CONVEYANCE.					
		SURRENDER (<i>not otherwise charged in this schedule, nor expressly exempted from all stamp duty</i>) of any term or terms of years, or of any freehold or uncertain interest, in any lands, hereditaments, or heritable subjects, not being of copyhold or customary tenure	1	15	0

SURRENDER—*continued*.

And where the same, together with any schedule, receipt, or other matter put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *pro-*
gressive duty of

£. s. d. PURCHASES.

Stamp Act,
 55 Geo. III.
 c. 184.

1 5 0

SURRENDER of copyhold lands or tenements.—See COPYHOLD.

MODERN PRECEDENTS

IN

CONVEYANCING.

MODERN PRECEDENTS

IN

CONVEYANCING.

CLASS I.

CONVEYANCES AND ASSURANCES TO PURCHASERS.

AGREEMENTS.

No. I.

*An Agreement (1) for the Purchase of a Freehold Estate of
Inheritance.*

ARTICLES OF AGREEMENT entered into this day of in the year of our Lord	PURCHASES.
	AGREEMENTS.
	Freeholds.

(1) An agreement in its proper sense is always to be considered as something inconclusive of itself, and requiring a more perfect and definitive assurance to carry into complete effect the object to which it relates, and to which it is merely preliminary or preparatory. See *Dillon v. Dillon*, 1 Ball and Beat. 89. *Locky v. Knox*, ib. 215. *Pentland v. Stokes*, 2 ib. 73. Hence it should be so worded as to have reference throughout to a future time, and to some object not now but hereafter to be perfected: it transfers no property, not the most inchoate, in the subject of the contract, nor at law confers any right to such property, but merely furnishes a ground for a pecuniary consideration in the shape of damages against the party refusing to perform it. In equity, however, it receives a more substantial and efficient con-

PURCHASES. BETWEEN (*the vendor*) of _____ in the county
AGREEMENTS. of _____ [for himself, his heirs (2), executors,

Freeholds.

sideration, and confers, though not the thing itself, yet a right to it in specie, and to an extent which gives the party entitled under it nearly the same power and control over the thing contracted for, and subjects it also to similar rules of law as if it were in his actual possession.

Agreements respecting lands, &c. required by 29 Car. 2, c. 3, to be in writing.

By the statute of frauds and perjuries, 29 Car. 2, c. 3, every contract for sale of any lands, tenements or hereditaments, or any interest in or concerning the same, is required to be in writing and signed by the party to be charged therewith, or some other person by him lawfully authorized.

Agreements should provide for every object the parties have in view.

The frequent disputes which have arisen between vendors and purchasers relative to the precise terms upon which either party can compel the other to perform his part of the contract, or rather, perhaps, relative to the true extent and construction of the existing agreement between them, renders it necessary that every point, whether of law or of practice, which by any probability may afterwards arise between their solicitors or counsel, should be embraced and provided for by such written contract: a matter which has become more particularly requisite, since the modern decisions that the construction of agreements shall not be influenced by any acts of the parties themselves tending to show their own conception of its meaning, see *Clifton v. Walmesley*, 5 Durnf. and E. 564. *Iggulden v. May*, 7 East, 237. 9 Ves. jun. 325, *S. C. Eaton v. Lyon*, 3 Ves. jun. 694, unless where the words are evidently of dubious import, *Davis v. Oliver*, 1 Ridgway, P. C. 9, 10, 15. *Redington v. Redington*, 3 ib. 194, or have some legal import contrary to the knowledge or intention of the parties, *Dillon v. Dillon*, 1 Ball and Beat. 89. *Lecky v. Knox*, ib. 215. *Pentland v. Stokes*, 2 ib. 73. There are, in truth, few species of assurances which require more attention in framing than articles for the purchase of estates: the present will therefore be found to be more full and particular than those which the student has probably been accustomed to meet with; but his future experience will not, it is apprehended, fail to satisfy him of the propriety of every cautionary provision they contain.

Agreements not to be construed by the act of the parties.

"Heirs."

(2) As a covenant or agreement to convey runs with the land, and the heirs of a vendor are consequently bound by

and administrators (3)], of the one part, and **PURCHASES.**
(the purchaser) of in the county of **AGREEMENTS.**
 [for himself, his heirs, executors, administrators, **Freeholds.**
 and assigns,] of the other part, as follow, (that
 is to say :)

The said (*vendor*) doth hereby agree to sell,
 and the said (*purchaser*) doth agree to purchase,
 (subject nevertheless to the approbation of the
 counsel (4) of the said (*purchaser*) as to the title
 of the said (*vendor*), the inheritance in fee simple
 and in possession of ALL, &c. containing by
 estimation acres (5) statute (*or* customary)

his contract for sale of an estate of inheritance, or *pur autre*
vie, although not expressly named, these words of representa-
 tion are not material to be inserted, see Gill v. Vermuden,
 2 Freem. 199, and although the heir be an infant, he will, it
 seems, be compellable to complete the contract of his ancestor
 under 7 Ann, c. 19, see Smith v. Hibbard, 2 Dick. 730, and see
 ——— v. Handcock, 17 Ves. 384.

(3) The estate is here supposed to be freehold, but as many
 of the stipulations are of a nature to be performed by the per-
 sonal representatives, in case of the decease of the parties, it is
 proper that their executors and administrators, as well as their
 heirs, should be named in the contract: it is not, however, im-
 portant, as such representatives will in general have the same
 powers, and be subject to the same liability, as if they were
 named, see Gill v. Vermuden, 2 Freem. 199. **"Executors and
 administrators."**

(4) Notwithstanding a declaration that the agreement shall
 be subject to the title being approved of by the counsel of the
 purchaser, yet as this is construed to have reference only to the
 actual validity of the title, Lewis v. Lechmere, 10 Mod. 505, the
 purchaser, if it be so in the opinion of the court, will be bound
 to complete his contract, notwithstanding the disapprobation of
 the title by his own counsel, unless it be otherwise expressly
 agreed between the parties. **If title good in
 opinion of Court,
 purchaser
 bound.**

(5) If land be described as consisting of so many acres, they
 will be understood to mean statute acres, according to 33
 Ed. I. containing 160 square perches, the perch being 16½
 feet. **Acres intend
 statute acres.**

PURCHASES. measure, more or less, free from all demands,
AGREEMENTS. charges, and incumbrances whatsoever, (except
Freeholds. only leases at rack rent not exceeding years,
 and containing only usual covenants), (6) together
 with the rights, members, and appurtenances to the
 same premises belonging; at or for (7) the price or
 sum of £ to be paid at the time and in the
 manner hereinafter mentioned.

Vendor to fur-
 nish abstract
 of title in a
 given time.

And the said (*vendor*) doth promise and agree
 that he, or his heirs, shall and will cause to be

feet in length, *Wing v. Earle*, Cro. Eliz. 267. (Sed vid.
Waddy v. Newton, 8 Mod. 276); but as by the custom of some
 places, the acre consists of a less quantity of ground, *Crompton*
Courts, 222, Co. Lit. 5 b, it seems proper that they should
 be stated to be "according to the statute," or, "according to
 the custom of the country," *as the case may really be*.

Reference to
 Leases.

(6) This stipulation with respect to the covenants in the
 leases being such only as are customary, seems proper on behalf
 of the purchaser, on account of a late decision that if he con-
 tract for the purchase with notice of a subsisting lease, he will
 be bound by his contract, although such lease should contain
 covenants contrary to the custom of the country, and detri-
 mental to the inheritance, *Taylor v. Stibbert*, 2 Ves. jun. 437.
Hall v. Smith, cited Sugd. Vend. and Pur. 8. 14 Ves. 426, S. C.

Some consider-
 ation necessary.

(7) Some consideration either good or valuable is essential
 to every agreement, as a *nudum pactum*, or agreement without
 some adequate motive or inducement to the parties to enter
 into it, is absolutely void. See Plow. Comm. 309. Dyer 386.
 2 Blac. Comm. 445. *Rann v. Hughes*. 7 Durnf. and E. 350 n.
 and more fully 4 Elem. Conv. 328.

Agreement for
 sale at so much
 per acre suffi-
 ciently certain.

Sometimes the sale of an estate is contracted for at so many
 years purchase, or at so much per acre, instead of a specified
 sum being previously agreed upon, and this has been holden
 to be a sufficient certainty of price under the statute of frauds,
Shannon v. Bradstreet, 1 Sch. and Lef. 73; the consideration must
 however be either certain in itself or reducible to a certainty,
 See *Milnes v. Gery*, 14 Ves. 408, and by the late stamp act of
 55 Geo. III. c. 184. must be stated in the deed.

made and delivered at his or their own expense, unto the said (*purchaser*) [his heirs or assigns, or his or their solicitor], within one calendar (8) month from the date hereof, a full and satisfactory abstract of the title of him the said (*vendor*) to the said premises.

PURCHASES.

AGREEMENTS.

Freeholds.

And also shall and will on or before the day of now next ensuing, upon receiving from the said (*purchaser*) [his executors, administrators, or assigns], the said sum of £ execute proper conveyances and assurances of the inheritance in fee simple, in possession, of all and singular the said premises; and deliver over the title deeds thereof (except as hereinafter mentioned) unto, and to the use of the said (*purchaser*) [his heirs and assigns, or as he or they shall direct], free from all incumbrances. And it is hereby agreed that all persons (9) possessing any legal or equitable estate or interest in the said premises, or beneficially intitled to the purchase money thereof, shall if required [by the said (*purchaser*), his

On payment of purchase money to execute a conveyance.

(8) Although the months be not expressed to be calendar months, they will in this case be so intended, unless the contrary appear; it is not therefore material that it should be so stated. See *Franco v. Alvares*, 3 Atk. 346.

Months intend calendar months.

(9) This stipulation, though conformable to practice, and in most cases proper, is more particularly so where the estate is purchased of trustees or executors directed to sell for payment of debts or legacies, (unless the sums payable to the respective creditors are very trifling), as without such stipulation it appears to be the prevailing opinion that the purchaser cannot insist upon any of the *cestuique trusts* being parties, nor upon other covenants in his purchase deed than from the trustees or executors that they have not encumbered. And see *Wakeman v. Duchess of Rutland*, 3 Ves. jun. 236. 505.

All persons interested to join.

PURCHASES.**AGREEMENTS.****Freeholds.**

Conveyance to contain proper covenants.

And be at purchaser's expense.

Except fines, &c.

Covenants should be mentioned.

Purchaser must bear the expense of conveyance.

Fines and recoveries must be at expense of vendor.

So of covenant for production of title deeds.

And assignment of terms unless already assigned to attend.

heirs, or assigns], join in the said assurances according to their respective estates and interests.

And it is further agreed that all such conveyances and assurances of the said premises, as aforesaid, shall contain all usual and other proper covenants (10) for the title, quiet enjoyment, and further assurance; and shall be prepared by and at the expense of the said (*purchaser*) [his heirs, executors, administrators, or assigns], (11) except only any fine, recovery, covenant for the production of title deeds, (12) or release, assignment, or surrender of incumbrances, and of outstanding terms not heretofore assigned to attend the inheritance, (13) which shall be made, levied, suffered,

(10) As the statute of frauds requires all contracts respecting land to be in writing, see ante, n. (1), it seems proper not only that the consideration to be paid, but that the covenants for the title, &c. should also be mentioned in an agreement for the sale of an estate, they constituting a part of the terms of the contract.

(11) The expense of taking a clear estate from the vendor falls on the purchaser, (unless there be a stipulation to the contrary, 2 Ves. jun. 155), who according to the established practice, and also the latest authorities, must prepare and tender the conveyance; see *Baxter v. Lewis*, Forr. Exch. Rep. 61. *Martin v. Smith*, 2 Smith's Rep. 543; and the same rule is recognized in *Webb v. Bettel*, 1 Lev. 44, contrary however to some recent *dicta* of the judges, see *Sug. Vend. and Pur.* 216.

But the expense of fines, recoveries, and other acts necessary to vest such clear estate in the vendor is always borne by the vendor.

(12) The covenant for the production of title deeds retained by the vendor and not delivered to the purchaser, is always prepared by the solicitor of the vendor, and at the vendor's expense.

(13) Different opinions seem to prevail in the profession, as to what terms are to be assigned at the expense of the vendor and what not; but the prevailing practice is subservient to the

and prepared respectively by and at the expense of the said (*vendor*) [his executors or administrators].

PURCHASES.

AGREEMENTS.

Freeholds.

Incumbrances to be paid off before the conveyance.

PROVIDED nevertheless that in case the said premises shall be in mortgage, or subject to any rent charge, or other incumbrance, (14) the same shall, if required by the said (*purchaser*) [his heirs or assigns] be paid off or otherwise satisfied by the said (*vendor*), [his executors or administrators], and the estate vested in the said (*vendor*) and his heirs, previously to the conveyance so to be made to the said (*purchaser*); and, in default thereof, the release or other exoneration of the said premises from the said charge or incumbrance, shall be by separate instrument or instruments to be prepared by the counsel of the said (*purchaser*) [his heirs or assigns], at the expense of the said (*vendor*) [his executors or administrators].

And the said (*purchaser*) doth hereby promise and agree, that upon the execution of such conveyances and assurances, and delivery of such possession and title deeds as aforesaid, he the said (*purchaser*) [his executors or administrators], shall and will pay unto the said (*vendor*) [his exe-

Purchaser on execution of conveyance to pay purchase money.

above form; and it seems accordant with reason, for when a term has been once assigned to attend upon the inheritance, it can no longer be considered as an incumbrance, but becomes in truth a protection. And vid. Sugd. Vend. and Pur. 366.

(14) Since the great increase of the stamp duty, this stipulation seems necessary in order to avoid, on the part of the purchaser, the expense which might in many cases be incurred by the additional length of his conveyance, if all incumbrancers were to join; indeed the common practice now is to require this.

Incumbrances to be previously discharged.

PURCHASES.**AGREEMENTS.***Freeholds.*

Purchaser to be entitled to rents from last quarter day.

If purchase not completed on day appointed, interest to be paid for purchase money.

Payment may be made to agent.

Rents and profits, unless of a nature that accrue daily, belong to purchaser from last quarter day.

cutors or administrators, or other person (15) or persons duly authorized to receive the same], the said purchase money or sum of £ , in lawful current money of Great Britain, or notes of the Governor and Company of the Bank of England payable on demand.

And it is hereby agreed that the said (*purchaser*) [his heirs and assigns], on payment of the said purchase money, shall be entitled to the rents and profits of the said premises from the day of now last past (16); up to which time all taxes, rates, assessments, and other outgoings, payable in respect of the said premises, shall be paid and discharged by the said (*vendor*) [his heirs, executors, or administrators].

And it is hereby further agreed, that if by reason of any unforeseen or unavoidable obstacles, the conveyances and assurances aforesaid cannot be prepared or perfected for execution, on the said day of , the said (*purchaser*) his executors and administrators shall pay interest for the said purchase money or sum of £ , after the rate of £5 per cent. per annum, from such day of (or other time from which he shall be entitled to the rents and profits of the said premises), until the execution of the said

(15) This payment may be made to an agent of the principal, if duly authorized, as well as to the principal himself. *Thompson v. Thompson*, 7 Ves. 470.

(16) This is a general rule (unless otherwise agreed), except in the case of a colliery, or other thing of which the profits accrue daily, when the course is for the purchaser to have the profits from the last week, or other period at which the accounts are usually made up, see *Wren v. Kirton*, 8 Ves. jun. 502.

assurances (17) and the payment of the said purchase money, unless the said (*purchaser*) [his heirs or assigns] shall relinquish this present contract for defect of title; in which case the said parties shall remain in statu quo.

And it is further agreed, that if the counsel for the said (*purchaser*) [his heirs or assigns] shall be of opinion that a clear and marketable title free from incumbrances (18), cannot be deduced of the

PURCHASES.

AGREEMENTS.

Freeholds.

If title defective
the present
articles to be
void.

(17) As the estate is considered in equity as belonging to the purchaser, and the purchase money to the vendor, from the time agreed upon for completing the contract, vid. 1 Elem. Conv. Ch. 1. s. 1. *Seton v. Slade*, 7 Ves. jun. 274, the one will be entitled to the rents, and the other to interest for his money from that time, till the completion of the contract. See *Davy v. Barker*, 2 Atk. 489. *Dyer v. Hargrave*, 10 Ves. 505. *Fludyer v. Cocker*, 12 ibid. 25; except in the case of timber to be paid for by the purchaser, for which interest is payable only from the time of the valuation, *Waldron v. Forrester*, cited Sugd. Vend. and Pur. 429. But as numberless disputes have arisen on the subject, on account of the delay being attributed by each of the parties to the other, and as the rate of interest to be paid by the purchaser is not fully settled, see *Cox v. Chamberlaine*, 4 Ves. jun. 631. *Gaskarth v. Lowther*, 12 ib. 107. *Waldron v. Forrester*, cited Sugd. Vend. and Pur. 429, an express stipulation to the above effect seems to be proper.

Purchaser entitled to rents and vendor to interest from the time appointed for completion of purchase.

Except on purchase of timber, when interest commences from valuation.

(18) Although a purchaser is not bound to accept a title attended by circumstances, which may by possibility affect him, yet he cannot object to it on account of bare suspicion of defects, which the obscurity or loose wording of the deeds may give rise to, for per Lord Hardwicke, Ch. "It is impossible in the nature of things that there should be a mathematical certainty of a good title." *Lyddell v. Weston*, 3 Atk. 20.

Bare suspicion of defects, no objection to the title.

It may also be here observed, that outstanding terms or incumbrances upon the estate furnish no objection to the title, as the vendor, for any thing that can be known, may be able to get in or remove them before the time required of him to convey, or the several termors or incumbrancers may be ready to join in the conveyance. See *Omerod v. Hardman*, 5 Ves. 725. *Berkley v. Dauh*, 16 Ves. 380.

Nor outstanding terms or incumbrances.

PURCHASES. whole (19) of the said premises for 60 years (20) last

AGREEMENTS. past, or in case the conveyance shall not be per-

Freeholds. fected by the time hereby appointed for the com-

pletion of the said purchase, or within two terms
next thereafter, or in case the several persons
possessing any estate or interest in the said pre-
mises, or entitled to the said purchase money, shall
refuse to join in the conveyance to the said (*purchaser*) [his heirs or assigns], or if the said (*vendor*)
shall become a bankrupt (21), or shall be found to

Purchaser not
compellable to
take part only
of premises.

(19) A purchaser is not compellable to complete the purchase of a part only of the premises on the vendor failing to deduce a good title to the rest, *Tomkins v. White*, 3 Smith, 435; he may, however, do so should he think proper, and the vendor will be bound to execute a conveyance of so much as he has a good title to, and to make an abatement as to that to which his title is defective, *Hill v. Buckley*, 17 Ves. 394.

Title should be
of 60 years
duration.

(20) This title should be at least of 60 years deduction, as a rightful owner deriving his title from any period posterior to that, may enforce his claim by writ of right, and where there are remainders or subsisting entails, he may require it for an indefinite length of time, according to the circumstances of the case; for the title of those in remainder cannot take effect, and consequently will be kept alive till the decease of the particular tenant, or failure of issue of the tenant in tail, which may not happen until long after the expiration of a period of 60 years.

Vendor after an
act of bank-
ruptcy cannot
enforce specific
performance.

(21) If the purchaser of an estate commit an act of bankruptcy, although no commission issue, he cannot enforce a specific execution of the contract, although a part of the purchase money be even paid, *Franklin v. Lord Brownlow*, 14 Ves. 550, because, should a commission issue, the money will belong to the assignees, who may recover it from the vendor; and so if the vendor commit an act of bankruptcy, the purchaser will not be compelled to accept the title, although no commission follow, and no debt be shown upon which it may be issued, *Lowes v. Lush*, 14 Ves. 547.

Purchaser may
require same title
from assignees
as from a solvent
vendor.

It was held by Lord Rosslyn that where the purchase was made of the assignees of a bankrupt, the purchaser was obliged to be satisfied with such title as the bankrupt had at the time of

derive his title under a devise (22) which has not been proved *per testes*, or shall not be so proved, if required by the counsel of the said (*purchaser*), and the heir at law of the devisor shall refuse to join in the conveyance, then and in either of the said cases this present contract shall, at the option of the said (*purchaser*), be void from the time of such opinion given (23), or refusal made, and these articles and the counterpart thereof, be reciprocally delivered up to be cancelled, unless in the case of any such defect of title, the same shall extend to a very inconsiderable part only of the said premises, or an outgoing not exceeding £ per annum, in which case the said contract shall

PURCHASES.

AGREEMENTS.

Freeholds.

the commission, and could not insist upon its being strictly free from objection as in other cases, see *Pope v. Simpson*, 5 Ves. jun. 145; but it is now established, that a purchaser may require the same unexceptionable title from the assignees as from a solvent vendor, see *White v. Foljambe*, 11 Ves. jun. 387, and *M'Donald v. Hanson*, 12 ib. 277, and see also the earlier cases of *Orlebar v. Fletcher*, 1 P. Wms. 737, and *Spurrier v. Hancock*, 4 Ves. jun. 667.

(22) Formerly a title might be objected to on account of its being derived from a devise, by which the heir at law was disinherited, see *Fearn. Post. Wks.* 234, but as it is now holden that the title cannot be objected to on that account, see *Sugd. Vend. and P.* 308. and yet there may be reasonable grounds of suspicion that the heir may hereafter contest the validity of the will, it seems proper that proof *per testes* should be expressly stipulated for if required.

Title under a devise disinheriting an heir, not to be objected to.

(23) Unless it is otherwise stipulated, or there has been unreasonable delay on the part of the vendor, a specific performance of the agreement will be decreed, if the vendor is able to make a good title at the hearing of the cause or the master's report, although he had none at the time of entering into the contract, or at the time of filing the bill, see *Wynn v. Morgan*, 7 Ves. jun. 202. and *Vancouver v. Bliss*, 11 ib. 465.

If vendor able to make a title at hearing of cause, specific performance will be decreed.

PURCHASES. remain in force upon a reasonable abatement being
 made by the said (*vendor*) [his executors or ad-
AGREEMENTS. ministrators], in respect thereof (24); and it is
 hereby agreed, that in case of the title so proving
 defective, all reasonable costs, charges, and ex-
 penses paid or sustained by the said (*purchaser*)
 [his heirs or assigns, or his or their solicitor], in
 the investigation thereof, or in insuring the said
 premises against loss by fire, shall be borne and
 paid by the said (*vendor*), his heirs, executors,
 or administrators (25).

Errors in de-
 scription, &c. not
 to vacate con-
 tract.

And it is further agreed, that any trifling error
 or omission which may appear to have been made
 with respect to the quantity, or other description
 of the said premises (so that the same be not
 essentially different in quality from those herein
 described, and be situated within the said county
 of (26), shall not vacate the present con-
 tract, but a reasonable abatement shall be made
 by the said (*vendor*) [his executors or admi-
 nistrators], or equivalent given by the said (*pur-*

Abatement.

(24) This provision is agreeable to the doctrines of our courts of
 Equity, see *M'Queen v. Farquhar*, 1 Ves. jun. 467.

Expense of in-
 vestigating
 defective title
 must be borne
 by vendor.

(25) This stipulation is conformable to the late authorities,
 see *Fleureau v. Thornhill*, 2 Blac. Rep. 1078. *Turner v. Beaurain*,
 cited Sug. Vend. and Pur. 209, 244. *Bratt v. Ellis*, ib. App.
 No. 7.

Specific per-
 formance de-
 creed, although
 lands be of a
 different nature.

(26) It is sometimes an important consideration with a pur-
 chaser, that the premises should be of the nature or quality of
 that described, and situated within the county or place in which
 they are stated to be, and yet a specific performance has often
 been decreed, notwithstanding they were of a different nature.
 See *Drewe v. Hanson*, 6 Ves. jun. 675, and the cases there
 cited, also *Drewe v. Corp*, 9 ib. 368. *Hill v. Buckley*, 17 ib.
 394, hence the prudence of this proviso.

chaser) his heirs, executors, administrators, or assigns, as the case may require (27); the amount of which abatement or equivalent shall be adjusted and settled by the solicitors of the said (*vendor*) and (*purchaser*) or their respective counsel; and in case of difference of opinion between them, shall be by them referred to the arbitration of three surveyors, to be chosen in the usual manner.

PURCHASES.

AGREEMENTS.

Freeholds.

And it is further agreed, that any loss or damage which may happen to the said premises, by fire, storm, or tempest, or any increase in value which may accrue thereto, at any time between the date hereof, and the completion of the said purchase, shall not in anywise vacate or affect the present contract (28).

Intervening accidents not to affect the contract.

(27) As it often happens that there is some small claim upon the estate contracted to be sold, which did not occur to the vendor at the time of his entering into the agreement, and as the most trifling omission or variation with respect to the premises contracted for, either by their being subject to a small fee farm rent, *Turner v. Beaurain*, cited *Sugd. Vend. and Pur.* 209, or being for a shorter term than agreed for, *Farrer v. Nightingale*, 2 *Esp. Ca.* 639, will at law entitle the purchaser to vacate the contract; and relief be afforded in equity, only under circumstances, and not as a matter of course, 2 *Eq. Ca. Ab.* 5, pl. 4. *Guest v. Homfray*, 5 *Ves. jun.* 818. *Mortlock v. Buller*, 10 *ib.* 306. *Dyer v. Hargrave*, *ib.* 505. *Halsey v. Grant*, 13 *ib.* 73. *Horniblow v. Shirley*, *ib.* 73, 81; this provision should seldom be omitted.

Trifling incumbrances will vacate a contract at law, but otherwise in equity.

(28) As the Courts of Equity consider the purchaser as owner of the estate from the time of the execution of the contract, *Seton v. Slade*, 7 *Ves. jun.* 292, (and in sales before a master, from the time of the confirmation of his report), and therefore liable to the loss and entitled to the benefit which may subsequently accrue to it, this provision may seem not to be essential;

Purchaser liable to accidents.

PURCHASES.**AGREEMENTS.*****Freeholds.***

Vendor not to
grant leases.

Title deeds if
relating to pro-
perty of equal
or greater value
to be retained
by vendor.

And it is moreover agreed that the said (*vendor*) or his heirs, shall not from henceforth during the subsistence of this present contract, grant or agree to grant any leases of the said premises, or any part thereof, without the consent in writing of the said (*purchaser*) [his heirs or assigns].

And it is hereby lastly agreed, that if any of the title deeds or writings relating to the said premises shall be found to concern other property of the said (*vendor*), of greater or equal value, they shall be retained by him on his delivering, at his own expense, true and attested copies thereof, duly stamped (29), and entering into a usual and proper covenant, to be prepared by his own counsel, but to be approved of by the counsel of the

but this doctrine having been but lately fully established, see *ex parte Minor*, 11 Ves. jun. 559, it is better for the prevention of controversy that express provision be made for such intervening accident.

Purchaser
should insure
premises.

The rule of equity here referred to renders it proper also, if the subject of the contract be houses, or any thing of a combustible nature, that the purchaser should insure them against casualties by fire, or stipulate that they shall be kept insured by the vendor till the execution or dissolution of the contract. See *Paine v. Meller*, 6 Ves. jun. 649. In which case it should be declared as above, that the money expended for that purpose shall be repaid by the vendor.

Attested copies
of deeds not de-
livered must be
furnished at
vendor's
expense.

(29) Or, "plain and unstamped," if so agreed. It is a settled rule that where a purchaser cannot have the title deeds delivered to him, he has a right to attested copies at the vendor's expense, *Barry v. Young*, 2 Esp. Rep. 640, n. *Exp. Dare v. Tucker*, 6 Ves. jun. 460. But as different opinions have prevailed, whether such copies should be stamped agreeably to the act of 55 Geo. 3. c. 184, at the vendor's expense, and as this is a matter of no inconsiderable importance in small purchases, it is extremely proper that the case should be provided for in the articles of contract.

said (*purchaser*) [his heirs or assigns], for producing the originals thereof. And it is also agreed that like copies of all such deeds and writings as shall relate to other property of the said (*vendor*) of inferior value, and shall be delivered to the said (*purchaser*) [his heirs or assigns], shall, if required by the said (*vendor*) [his heirs or assigns], be made and delivered to him or them, at his or their own expense, and a like covenant for the production of the originals thereof, [at his and their like expense,] be executed by the said (*purchaser*) [his heirs or assigns].

PURCHASES.

AGREEMENTS.

Freeholds.

And for a due performance of the several stipulations and agreements, matters and things hereinbefore contained, on the part and behalf of the said (*vendor*) and (*purchaser*) respectively, [and of their respective heirs, executors, and administrators,] each of them the said parties doth hereby bind himself, his heirs, executors, and administrators, unto the other of them, [his executors, administrators, and assigns], in the sum of £ , to be taken and considered as liquidated and settled damages (30) between them, and not as *in terrorem*, or by way of penalty.

Sum of £ by way of liquidated damages payable by either party on nonperformance of agreement.

(30) It is usual to insert in contracts of an executory kind, a clause stipulating for the payment of a sum of money either by way of penalty (or *nomine pænæ*, as it is generally called), or for liquidated or acknowledged damages, in case of failure by either party in the performance of his part of the contract; but this should not be done indiscriminately, as it may impede instead of furthering the ends in view. It will be proper therefore to make some observations on this head, with a view of enabling the solicitor to judge in what cases the one, and in what the other is to be preferred.

Nomine pænæ, where proper and where not.

PURCHASES.

AGREEMENTS

Freeholds.

Penalties considered in *terrorem* in equity, and specific performance decreed notwithstanding.

IN WITNESS whereof the said (*vendor*) and (*purchaser*) have hereunto interchangeably set

And first, it is to be remarked, that penalties are in most cases considered by the courts of equity as inserted *in terrorem only*, and therefore those courts will, notwithstanding, decree a specific performance if applied to for that purpose, whenever the case is such as to authorize an equitable interference, and will not allow the party by forfeiture of the penalty to avoid performance of his agreement, *Jenkyns v. Keymis*, 1 Lev. 150, 237. 1 Ch. Ca. 103. *Howard v. Hopkins*, 2 Atk. 371. *Hopson v. Trevor*, 1 Stra. 533. 2 P. Wms. 191, and the cases to which the jurisdiction of the court of equity extends, are all those where the redress afforded by the courts of law (in the shape of damages or otherwise), is an inadequate remedy, and justice, according to the spirit of the agreement and the intention of the parties, can be administered only by a specific execution of the terms of the contract; and on the other hand, that court will stay proceedings on an action brought for damages, if the party is ready to perform the agreement in specie. See *Hopson v. Trevor*, 2 P. Wms. 191, and cases there cited, also *Goring v. Nash*, 3 Atk. 166. In these cases therefore, a penal or damnatus clause is unavailable; but where the subject of the agreement is such that damages would be an adequate compensation for the breach of contract, *Buxton v. Lister*, 3 Atk. 383. *Underwood v. Kitchener*, 1 Ves. 279. *Nutbrowne v. Thornton*, 10 Ves. 161. *Mason v. Armitage*, 13 Ves. 37, or where for any other cause the legal remedy is more effective or expeditious, *Kent v. Brandon*, 8 Ves. 163; either a penal sum or else a sum by way of ascertained damages will be proper. So when the party who may require redress for breach of contract, is a mere volunteer; i. e., when the agreement by the other party is not supported by any good or valuable consideration, or where the amount of damages sustained by nonperformance is wholly uncertain, (as in the refusal to refer a matter to arbitration,) a like clause will be proper, because in such cases a court of equity will not interfere, but on failure by either party will consider the option to pay the penalty as of the essence of the contract, *Magrane v. Archbold*, 1 Dowe 109; and the clause of penalty gives to the party an election to proceed either on the contract or for the penalty, See *Lowe v. Pears*, 4 Burr. 2228, where per Mansfield, Ch. J. "the difference

their respective hands, the day and year first above written.

PURCHASES.

AGREEMENTS.

Fredholds.

between covenants in general and covenants secured by a penalty or forfeiture is, that in the latter case the obligee has his election either to bring an action of debt for the recovery of the penalty (after which he cannot resort to the covenant, because the penalty is to be a satisfaction for the whole), or if he do not choose to go for the penalty, he may proceed upon the covenant and recover more or less than the penalty toties quoties." And see accord. *Astley v. Waldon*, 2 Bos. and Pul. 346. *Harrison v. Wright*, 13 East 343. And also *Bird v. Randall*, 1 Blac. 373.

With respect to where a sum by way of nomine pœnæ, and where a sum by way of liquidated damages is proper, the following distinctions are to be taken, viz. where the nature of the contract is such as to admit of successive breaches, as to pay a sum of money by periodical payments, or to perform any other acts from time to time or at different periods, there a nomine pœnæ seems the proper clause, because on the first breach, judgment is recoverable for the whole of the penal sum, upon which execution may be issued from time to time on any subsequent breach, *Harrison v. Wright*, 13 East 347, without the necessity of resorting to a fresh action for every successive breach, which the aggrieved party would otherwise be driven to if his remedy were confined to the covenant of the other party.

Where nomine pœnæ proper, and where a sum by way of liquidated damages.

But where the nature of the agreement is such that it can admit of but one breach, as to pay a sum in the gross or do any other thing at any one time or within a given period, then a sum by way of liquidated damages is most proper, as it prevents the necessity of a reference to a jury to ascertain the amount of the damages actually sustained, this having been previously done by the mutual agreement of the parties, in which case a court of equity will not in general relieve him against the payment, *Small v. Fitzwilliam*, Prec. Ch. 102. *Woodward v. Giles*, 2 Vern. 119. *Roy v. Duke of Bedford*, 2 Atk. 194. *Rolfe v. Patison*, 6 Brow. P. C. 470. *Ponsonby v. Adams*, ib. 417. *Street v. Rigby*, 6 Ves. 818. But when the sum is stipulated to be paid by way of liquidated damages, care must be taken to avoid mentioning it as a "penal sum," for the word "penalty" precludes the court from considering it as an

PURCHASES. acknowledged debt. *Smith v. Dickenson*, 3 Bos. and Pul. 632.

AGREEMENTS.

Freeholds.

Where in the case of a purchase.

With respect to the present case, i. e., an agreement for the purchase of an estate, the clause for liquidated damages seems to be most proper on the part of the vendor, as it prevents the difficulty he might have in proving the sustension of any actual loss by a failure on the part of the purchaser to complete his purchase; but on behalf of the purchaser there seems to be this distinction, that if his object in making the purchase is for his own residence, to procure himself a qualification, or if, for any other reason, the particular estate in question would be intrinsically valuable to him, a simple *nomine pœnæ* clause is preferable, as it enables him either to compel a specific performance of the contract against the vendor, or proceed for damages as he may think proper, whereas the liquidated damage clause would preclude him from calling for a specific performance; but where his only object is to invest his money in land generally, or to sell again at an increased price, the *nomine pœnæ* clause may be equally adequate to his purpose, as enabling him to recover such actual damages as he may have sustained.

. *As to what it behoves the solicitors of the vendor and purchaser respectively to do on behalf of their clients from the commencement of the contract to its completion or abandonment, See ante, INTRODUCTION, Sec. I. and II.*

PURCHASES.

AGREEMENTS.

Freeholds,
short form.

No. II.

*A shorter Form of an Agreement for the Purchase of a Freehold Estate of Inheritance.**Variations where the Timber upon the Estate is to be separately valued.**Where the Consideration for the Purchase is an Annuity.**Where it is a transfer of Money in the Funds.**Where part of the Purchase-money is to remain on the security of the Premises.**Where a Moiety or other portion only of the Estate is purchased.**Where the Premises are subject to a Mortgage or other Incumbrance.**Where the Contract is entered into by an Agent on behalf of either Party.*

ARTICLES OF AGREEMENT entered into this
 day of in the year of our Lord
 BETWEEN (*the vendor*) of in the county
 of for himself (1), his heirs, executors,

(1) If the contract be entered into by the attorney, or other agent of the vendor or purchaser, say, Purchase, &c.
by an agent.

“ BETWEEN (*the vendor*) for himself, his heirs, executors, and administrators, by A. B. of &c. his attorney or agent lawfully constituted in this behalf.”

PURCHASES.

AGREEMENTS.

*Freeholds,
short form.*

and administrators (2), of the one part, and (*the purchaser*) of in the county of for himself, his heirs, executors, administrators, and assigns, of the other part, as follow, (that is to say :)

The said (*vendor*) doth hereby agree to sell, and the said (*purchaser*) doth agree to purchase,

Agent agreeing
on the part of
his principal
should sign the
principal's
name.

And so, *mutatis mutandis*, where the agent is appointed on behalf of the purchaser. The way in which agreements of this kind are frequently prepared, is to make the agent a party in his own name, who covenants, "for and on behalf of" his principal, and signs his own name in the character of such agent; but this is improper, as it subjects the agent to a *personal* responsibility for the performance of the contract by his principal. See *Appleton v. Binks*, 5 East Rep. 148, and *vid. Wilks v. Back*, 2 ib. 142. *White v. Cuyler*, 6 Durn. and E. 176.

In making an agreement with an agent on behalf of his principal concerning land, it should be seen that he is invested with sufficient authority to treat, as without this, his signature will not be such as is required by the statute of frauds. *Howard v. Braithwait*, Ves. and Bea. 202.

An agent employed for the sole purpose of *contracting* for a sale or purchase, and not for *creating* or *conveying* an estate, need not be constituted in *writing*. See *Clinan v. Cooke*, 1 Sch. and Lef. Rep. 22, 27, 31, and *vid. Coles v. Trecothick*, 9 Ves. Jun. 250. *Mortlock v. Buller*, 10 Ibid. 311, and consequently it is not necessary that he should be a party to the deed. It is, however, in all cases material that some written agreement should subsist between the principal and his agent respecting the purchase, to prove the agency and trust under which the purchase was made, see *Bartlet v. Pickersgill*, 4 East, 577, n.; and that the agent may not exceed his authority, *Hicks v. Hankin*, 4 Esp. Rep. 114. *Fenn v. Harrison*, 3 Durnf. & E. 757. *De Bouchet v. Goldsmid*, 5 Ves. Jun. 211.

Wife's estate.

(2) Where the estate belongs to the wife of the vendor, it is usual to add, "and for his wife and her heirs;" but this is not necessary, nor indeed strictly correct.

the inheritance (3) in fee simple and in possession of ALL, &c. containing by estimation acres statute (or customary) measure, more or less, free from all incumbrances, at or for (4) the price or sum of £ (5) to be paid at the time and in the manner hereinafter mentioned (6).

PURCHASES.

AGREEMENTS.

Freeholds,
short form.

(3) If the vendor have an undivided moiety or other portion only of the premises, say, Moiety, &c.

“ ALL that undivided moiety or half part of him the said (vendor) of and in ALL, &c., and the inheritance in fee simple and in possession thereof, free from all incumbrances, at or for the price or sum of £ .”

(4) If the estate is sold after the rate of so many years' purchase, say, Sale at so many years purchase.

“ At or after the rate of years purchase, to be computed upon the arable and meadow lands now let out to farm at the present annual rent thereof, and upon the wood lands and coppice grounds now let out to farm after the rate of per acre.”

(5) If the timber is to be separately valued, add,

Timber separately valued.

“ Exclusively of timber.”

If the consideration be a transfer of money in the funds, say, Consideration, a transfer of stock.

“ At or for the price or sum of three per Cent. consolidated Bank Annuities, to be transferred into the name of the said (vendor) in the books of the Governor and Company of the Bank of England at the time hereinafter mentioned.”

If part of the consideration be an annuity to be paid to the vendor during his life, say,

“ And also an annuity or clear yearly sum of £ free of all deductions whatsoever, to be issuing out of and charged upon the said premises, during the natural life of the said (vendor) by equal half yearly payments on the day of , and the day in each Consideration, the grant of an annuity.

PURCHASES.**AGREEMENTS.***Freeholds,
short form.*

Vendor to furnish abstract of title in a given time.

Annuity, if not otherwise agreed, to be secured on the premises.

Adequacy of consideration not inquirable into unless it be an annuity, or otherwise uncertain.

Fixtures to be taken at a valuation.

And the said (*vendor*) doth promise and agree to deliver unto the said (*purchaser*) within one

year, and to be further secured by the bond or obligation in writing of the said (*purchaser*) and by a judgment to be entered up thereupon, in pursuance of a warrant of attorney to be given for that purpose."

Although no notice be taken in the agreement of the manner in which an annuity to be paid for the purchase of an estate is to be secured, the vendor has a right to have it secured in the manner provided for by the above clause, see *Remington v. Deverall*, 2 Anst. 550; but in this, as in all other cases where the law is not obvious to every practitioner, it is better, in order to prevent the delay and expense attendant upon discussions, to secure to each party by express stipulation, what the law gives him a right to.

And where such annuity, or any other uncertain consideration is agreed to be given for the purchase of an estate, it seems that the adequacy of the consideration may become the subject of inquiry, *Mortimer v. Capper*, 1 Brow. Ch. Ca. 156. *Jackson v. Lever*, 3 ib. 605. *Pope v. Roots*, 7 Brow. Par. Ca. 184, which is contrary to the practice of the courts in other cases, see *White v. Damon*, 7 Ves. Jun. 30. 8 ib. 517. *Coles v. Trecothick*, 9 ib. 234. *Burrows v. Lock*, 10 ib. 470. *Lowther v. Lowther*, 13 ib. 95. *Collier v. Brown*, 1 Cox, 428.

(6) If the subject of the purchase be an house, either wholly or in part, and the fixtures are to be taken at a valuation, say,

"And it is hereby agreed that all such fixtures, articles, and things, in or annexed to the said messuage and premises, which, as between landlord and tenant, are or would be deemed to belong to the tenant or occupier of the said premises, shall be taken by the said (*purchaser*) at a valuation to be made thereof by two appraisers, one to be chosen by the said (*vendor*), and the other by the said (*purchaser*), and in case of difference between them, then by a third appraiser, to be by such two appraisers named, and the amount of such valuation paid by the said (*purchaser*) at the time of the execution of the conveyance of the said premises."

calendar month from the date hereof, a full and satisfactory abstract (7) of the title of him the said (*vendor*) to the said premises.

PURCHASES.

AGREEMENTS.

*Freeholds,
short form.*

If the furniture be also to be taken at a valuation, say,

“And that all and every the articles of household or other furniture, utensils, and things now in or belonging to the said messuage or dwelling-house, shall be taken by the said (*purchaser*) at a valuation, &c.” *as above*.

Furniture to be
taken at a
valuation.

If the timber is to be separately paid for at a valuation, add,

“And it is hereby agreed that all timber growing upon the estate shall be taken by the said (*purchaser*), at a valuation to be made thereof by two indifferent persons, one to be chosen by the said (*vendor*), and the other by the said (*purchaser*), and in case of difference between them, then by a third person, to be by such two persons named; and in which valuation all trees considered to be of the value of 40 shillings shall be deemed timber, of whatever kind they may be.”

Timber to be
separately
valued.

If the agreement for the purchase be entered into at a season of the year when the thickness of the foliage may render it difficult to ascertain its value, it will be proper to add,

Valuation of
timber to be de-
ferred until fall
of leaf.

“But such valuation shall be deferred until the ensuing autumn, or fall of the leaf next after the date hereof; and upon the completion of the said purchase at the time hereafter mentioned, the said (*purchaser*) shall execute a bond in a sufficient penalty, conditioned for payment unto the said (*vendor*), within one calendar month next after such valuation shall be made, of the sum at which the said timber, wood, and coppice lands respectively shall be so valued.”

If part of the purchase money is to be secured on the premises, add here,

Part of the pur-
chase money to-
be secured on
the premises.

“And it is hereby agreed that the said purchase money or sum of £ shall be paid in the manner following, viz. the sum of £ part thereof, at the time of signing this agreement, the further sum of £ other part thereof, on the execution of the conveyance to the said (*purchaser*), and the further sum of £ being the

PURCHASES.**AGREEMENTS.***Freeholds,
short form.*On payment of
purchase money
to execute a
conveyance.Purchaser to
take subject to
defects.Consideration,
the transfer of
stock.Part of the pur-
chase money
secured on the
premises.Consideration,
an annuity.

And also on or before the day of
now next ensuing, upon receiving (8) from the
said (*purchaser*) the said sum of (9) £ to
execute proper conveyances and assurances of the

residue thereof, on the day of which will be in
the year , and in the mean time and until payment
thereof, the said last mentioned sums shall be secured by a
mortgage of the said premises, in such manner as the counsel
of the said (*vendor*) shall advise," *or otherwise, as the case
may be.*

(7) If the purchaser agrees to buy, subject to all casual de-
fects of title (which is often the case where one joint-tenant,
coparcener, or tenant in common, purchases the part of his
co-tenant), instead of the clause in the text, say,

"And it is hereby agreed by and between the said parties
hereto that the said (*purchaser*) shall purchase the said pre-
mises subject to all defects or imperfections of title subsisting
before the commencement of the title of the said (*vendor*),
and not occasioned by any act done by him or any persons
claiming under or in trust for him."

(8) If the consideration of the purchase be a transfer of stock,
"Upon the capital sum of £ 3 per cent. consoli-
dated Bank annuities, being transferred into the name and
for the use of the said (*vendor*) in the books of the Governor
and Company of the Bank of England, execute," &c.

(9) If part of the purchase money is to remain on the secu-
rity of the premises, say,

"Upon receiving from the said (*purchaser*) the sum of
£ in part of the said purchase money, and having
such security given upon the said premises for the payment
of the residue thereof as hereinafter mentioned, execute, &c."
as above.

If part of the consideration is the purchase of an annuity, say,
"Upon receiving from the said (*purchaser*) the sum of
£ , and having the said annuity secured upon the

said premises (10) unto the said (*purchaser*), his heirs and assigns, or as he or they shall direct, free from all incumbrances (11).

And it is hereby agreed that all persons in any wise interested in the said premises, or intitled to the purchase money thereof, shall, if required, join in the said assurances according to their respective estates and interests.

PURCHASES.

AGREEMENTS.

Freeholds,
short form.All persons in-
terested to join.

said premises to the satisfaction of the said (*vendor*) execute, &c." *as above*.

(10) If the vendor have a moiety or other portion only of the premises, say, Moiety, &c.

"Of the moiety or half part or share of him the said (*vendor*) of and in the said premises."

(11) If the premises are subject to a mortgage or other incumbrance, against which the purchaser is to indemnify the vendor, say, Premises sub-
ject to incum-
brances.

"Except only a certain mortgage in fee [*or for a term of* Mortgage.
years] for securing the principal sum of £
and interest, by an indenture bearing date the day of
and made between, &c. which said principal sum
of £ and the interest which shall accrue thereon from
the day of shall be paid and satisfied by the
said (*purchaser*), and the said (*vendor*) be indemnified there-
from."

If the incumbrance be an annuity, say,

Annuity.

"Save only and except a certain annuity or yearly rent
of £ issuing out of the said hereditaments, and pay-
able to during the term of his natural life, under or
by virtue of an indenture bearing date the day of
and made between, &c. which said annuity or yearly
rent of £ shall, from the day of be paid
and satisfied by the said (*purchaser*), and the said (*vendor*)
be indemnified therefrom."

PURCHASES.**AGREEMENTS.***Freeholds,
short form.*Conveyance to
contain proper
covenants.And be at pur-
chaser's expense.
Except fines, &c.

And it is further agreed that all such conveyances and assurances of the said premises, as aforesaid, shall contain all usual and other proper covenants for the title, quiet enjoyment, and further assurance; and shall be prepared by and at the expense of the said (*purchaser*) except only any fine, recovery, covenant for the production of title deeds, release of incumbrances, and assignments of outstanding terms not heretofore assigned to attend the inheritance (12).

PROVIDED nevertheless that in case the said

Contract to be
executed by
Chancery.

(12) Where it is necessary, on account of the infancy or other disability of the vendor, that the sanction of the Court of Chancery should be obtained for the contract, instead of the clause in the text, it may be stipulated,

“ That the present agreement shall be carried into execution under a decree of the Court of Chancery, in a suit to be instituted for that purpose by the said (*vendor*), and that the costs of obtaining the said decree, and of deducing a good title to the said premises, shall be paid out of the said purchase money, unless the said Court shall otherwise direct; but that all assurances required to be executed by the said (*vendor*) or his heirs, (except, &c. *as above*) shall be prepared by and at the expense of the said (*purchaser*) his executors or administrators. And that the said purchase money shall be paid into the Bank, with the privity, and in the name of the Accountant-General of the said Court, and placed to the credit of the cause so to be instituted, and be invested in the purchase of 3 per cent. consolidated Bank annuities, under the order of the said Court, until a good title shall be deduced, and such decree as aforesaid obtained. And upon payment of the said purchase money into the Bank, in the manner aforesaid, the said (*purchaser*) shall be let into the immediate possession of the said premises, and into the receipt of the rents and profits thereof, from the quarter day then next preceding.”

premises shall be subject to any incumbrance, the same shall, if required by the said (*purchaser*), be paid off or otherwise satisfied by the said (*vendor*), and the estate vested in him previously to the conveyance so to be made to the said (*purchaser*); and, in default thereof, the exoneration of the said premises from the said incumbrances, shall be by separate instruments to be prepared by the counsel of the said (*purchaser*) at the expense of the said (*vendor*) (13).

PURCHASES.

AGREEMENTS.

Freeholds,
short form.Incumbrances to
be paid off before
the conveyance.

(13) If the premises are subject to incumbrances, which are to be discharged previously to the conveyance to the purchaser, and the vendor is unable to do so without receiving part of the purchase money, say,

Premises subject
to incum-
brances.

“And the said (*purchaser*) doth hereby agree, that at any time after the title of the said (*vendor*) shall be approved by the counsel of the said (*purchaser*), he the said (*purchaser*) will, at the request of the said (*vendor*), advance any sum or sums of money, not exceeding in the whole the sum of £ , in part of the said purchase money, for or towards paying off any mortgage or other incumbrance there may be upon the said premises, upon having such assignment of the said mortgage or other incumbrance executed to or in trust for him, as his counsel shall advise.”

Or, “Pay unto any mortgagee, or other incumbrancer, so much money as shall be sufficient to pay off and discharge all principal and interest money due upon the security of the said premises, and pay the residue of the said purchase money unto the said (*vendor*).”

Or it may be agreed,

“That all judgments, legacies, portions, and other incumbrances chargeable upon the said premises, shall be paid and satisfied by the (*vendor*) on or before the day of , and satisfactory vouchers thereof be produced unto the said (*purchaser*), and in default thereof the said (*pur-*

PURCHASES.**AGREEMENTS.***Freeholds,
short form.*Purchaser on
execution of con-
veyance to pay
purchase money.Part of pur-
chase money
now paid.Part of pur-
chase money
secured on
premises.Purchaser to
insure.

Timber.

And the said (*purchaser*) doth hereby promise and agree, upon the execution of such conveyances and assurances, as aforesaid, to pay unto the said (*vendor*) (14) the said purchase money or sum of £ (15), in lawful current money of Great

chaser) shall be at liberty (but not compellable) to satisfy the same, with interest up to that time, and deduct the sum requisite for that purpose out of the said purchase money."

(14) If a part of the purchase money is to be paid down on signing the agreement, say,

"The sum of £ being the residue of the said purchase money, or sum of £ , as aforesaid.

If part of the purchase money is to be secured on the premises, say,

"The said sum of £ in part of the said purchase money, and to secure the further sum of £ being the residue thereof, upon the said premises, together with interest for the same, after the rate of £ per cent. per annum, in such manner, and payable at such times as the counsel in the law of the said (*vendor*) shall advise or require."

And in such case add an agreement for the purchaser to insure.

"And it is further agreed, that the said (*purchaser*) shall and will, on or before the execution of the conveyances and assurances aforesaid, insure the said premises in or for the sum of £ at the least for the term of years, in one of the public insurance offices against loss by fire, in London or Westminster, to be approved of by the said (*vendor*); the policy of which insurance shall be assigned to the said (*vendor*) as a further or collateral security for the repayment of the said sum of £ so agreed to remain upon the said premises as aforesaid."

(15) If the timber is to be separately valued, say,

"Together with the sum at which the said timber, wood, and coppice lands, respectively, shall be so valued as herein before is mentioned."

Britain, or notes of the Governor and Company of **PURCHASES.**
the Bank of England (16).

And it is hereby agreed that the said (*pur-*
chaser), on payment of the said purchase money,
shall be entitled to the rents and profits of the said
premises from the day of now last past ;
up to which time all taxes, rates, assessments, and
other outgoings, shall be discharged by the said
(*vendor*) (17).

AGREEMENTS.

Freeholds,
short form.

Purchaser to
be entitled to
rents from last
quarter day.

(16) As a moiety or other portion of an estate is generally of **Moiety, &c.**
less value if separately sold than it would be if annexed to the
intirety, it may be added,

“ That in case the said (*vendor*) shall, within the space of
calendar months from the date hereof, procure the
person or persons who for the time being shall be entitled to
the remaining moiety of the said premises, to sell and dispose
of the same to the said (*purchaser*), or for a price not ex-
ceeding the sum of £ , he the said (*purchaser*) shall
and will thereupon pay unto the said (*vendor*) the further
sum of £ for the estate and interest so now agreed to be
purchased as aforesaid.”

(17) It sometimes happens that the vendor gives liberty to
the purchaser to relinquish the purchase, either at pleasure, or
for some assigned cause, in which case add,

Purchaser to be
at liberty to re-
linquish.

“ Provided nevertheless that the said (*purchaser*) shall
be at free liberty, at any time before the expiration of
calendar months from the date hereof, to relinquish the said
purchase, on giving to the said (*vendor*) notice in writing
under his hand of his desire so to do, and doing all necessary
acts to reassure the said premises unto the said (*vendor*) free
from all intermediate incumbrances, waste, and prejudice.”

If a moiety only of the estate is sold, and the purchaser is to **Moiety, &c.**
be at liberty to relinquish the purchase, in case he cannot pro-
cure the remaining moiety, say,

“ Provided nevertheless that in case the person, or persons

PURCHASES.

AGREEMENTS.

*Freeholds,
short form.*

If purchase not
completed on
day appointed,
interest to be
paid for pur-
chase money.

And further, that if the conveyances and assurances aforesaid, cannot be perfected for execution, on the said day of , the said (*purchaser*) shall pay interest (18) for the said purchase money after the rate of £5 per cent. per annum, from the time from which he shall be entitled to the rents and profits of the said premises, until the execution of the said assurances and the payment of the said purchase money (19).

who for the time being shall be intitled to the remaining moiety of the said premises, shall not within the space of calendar months from the date hereof, execute a valid assurance of the said moiety to him the said (*purchaser*), as for a clear estate in fee-simple, upon being tendered the sum of £ for the purchase thereof, the said (*purchaser*) shall be at liberty to relinquish the said purchase, &c. *as above.*"

(18) Or it may be declared,

Purchase money
to be invested
in Exchequer
bills.

"That in case the said (*purchaser*) shall not have prepared a conveyance of the said premises, and delivered the same engrossed to the solicitor of the said (*vendor*) for execution, on or before the said day of , the said purchase money, or sum of £ , shall be laid out at the expense of the said (*purchaser*), but at the risk of the said (*vendor*), in Exchequer Bills, which shall be deposited at the banking house of Messrs. , in the joint names of the said (*vendor*) and (*purchaser*), and be delivered to the said (*vendor*), with the interest accrued thereon, when the proper assurances shall have been executed by the said (*vendor*)."

Time, essence
of contract.

(19) If it be intended that the completion of the purchase on the day appointed, should be considered as of the essence of the contract, instead of the above clause, it may be provided,

"That in case no abstract shall be delivered by the said (*vendor*) to the said (*purchaser*) within the said space of one calendar month, from the date hereof, or the said (*vendor*) shall not in the opinion of the counsel of the said (*purchaser*)

And further, that if a clear and marketable title free from incumbrances cannot be deduced of the whole (20) of the said premises, or the conveyance shall not be perfected by the time hereby appointed for the completion of the said purchase, or within two terms next thereafter, or if all persons interested in the said premises, or entitled to the said purchase money, shall not join in the conveyance (21), or if the said (*vendor*) shall become a bankrupt or derive his title under a devise not proved *per testes*, and the heir at law of the devisor shall refuse to join in the conveyance, then and in either of the said cases this present contract shall,

PURCHASES.

AGREEMENTS.

*Freeholds,
short form.*If title defective
the present
articles to be
void.

deduce a clear and marketable title to the said premises, then the contract hereby entered into, for the said purchase, shall be wholly void to every intent and purpose, it being the true intent and express agreement of and between the said parties, that a strict observance of the time hereinbefore appointed for the completion of the said purchase, shall be deemed as of the essence of the said contract, without reference or appeal to any court of law or equity."

And vid. *Seton v. Slade*, 7 Ves. jun. 265, and *Hall v. Seton*, 14 ib. 427, where the validity of a stipulation of this kind appears to be recognized:

(20) If the vendor have a moiety or other portion only of the premises, say, **Moiety, &c.**

"Cannot be deduced unto the whole of the premises hereinbefore contracted to be sold by the said (*vendor*)."

(21) If the vendor have a moiety or other portion only of the estate, and the purchaser is to have the privilege of rescinding the contract if he cannot obtain possession of the other moiety, add, **Moiety, &c.**

"Or if the person or persons who for the time being shall be intitled to the remaining moiety of the said premises shall refuse to sell or dispose of the same."

PURCHASES.**AGREEMENTS.***Freeholds,
short form.*

at the option of the said (*purchaser*), be absolutely void (22), unless any such defect shall extend to a very inconsiderable part only of the said premises, or to an outgoing not exceeding £ per annum, in which case a reasonable abatement shall be made by the said (*vendor*) in respect thereof. And it is hereby agreed, that in case the said contract shall be abandoned for defect of title, all reasonable costs and expenses paid or sustained by the said (*purchaser*) in investigating the said title, or in insuring the said premises against loss by fire, shall be borne and paid by the said (*vendor*) (23).

Errors in description not to vacate contract.

And further, that any trifling error or omission which may appear to have been made with respect

Part of purchase money paid down,

(22) If part of the purchase money is to be paid down at the time of signing the agreement, add,

“ And the said premises shall in such case be a security to the said (*purchaser*) for the repayment by the said (*vendor*) of the said sum of £ so now paid down by the said (*purchaser*) as aforesaid, upon the said day of , with interest for the same after the rate of £5 per cent per annum, from the date hereof.”

Purchaser to be let into possession.

(23) If the purchaser is let into possession it may be declared,

“ That if the said (*purchaser*) do not accept the said title, and pay the residue of the said purchase money on or before the said day of , he shall deliver up possession of the said premises free from all intermediate incumbrances, waste, or prejudice, by him made, done, or committed, to or upon the same, and in default thereof the said (*vendor*) shall be at liberty to re-enter upon the said premises without hinderance or process of law, and hold and enjoy the same as of his first and former estate.”

to the quantity, or other description of the said premises, shall not vacate the present contract, but a reasonable abatement shall be made, or equivalent given, as the case may require; the amount of which shall, in case of difference between the parties, be referred to the arbitration of three surveyors, to be chosen in the usual manner (24).

PURCHASES.

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Freeholds,
short form.

And further, that any loss or damage which may happen to the said premises, by fire, storm, or tempest, or any increase in value which may accrue thereto, at any time between the date hereof, and the completion of the said purchase,

Intervening accidents not to affect contract.

(24) If an acquisition of any particular part of the estate purchased, or the whole and entirety of it, be the chief inducement for the purchaser's entering into the contract, see *Drewe v. Hanson*, 6 Ves. jun. 675, and 7 ib. 330, this article must of course be varied and made to declare,

Errors in description to be fatal.

“That in case a good and marketable title cannot in the opinion of the counsel of the said (*purchaser*) be made to the whole of the said premises, [or to the said messuage or tenement situated at &c.] he the said (*purchaser*) shall be at liberty, on giving one calendar month's notice to the said (*vendor*), to vacate this present contract in toto, and not be bound to complete the same in respect of other the said messuages and premises herein comprised.”

So if the object of the purchaser be to acquire a *freehold*, and that in a particular county; or a *legal* and actual manor, it should be provided, instead of the above clause,

“That in case the said premises shall turn out not to be of an estate of freehold, or shall not be situated within the county of ; or the said manor of shall prove not to be a legal, but only a reputed manor, &c. then the said (*purchaser*), shall be at liberty, &c. *as above*.”

PURCHASES. shall not in anywise vacate or affect the present contract (25).

AGREEMENTS.

*Freeholds,
short form.*

Vendor not to
grant leases.

And it is moreover agreed that the said (*vendor*) shall not during the subsistence of this present contract, grant or agree to grant any leases (26)

Consideration,
the grant of an
annuity.

(25) If the consideration for the purchase be an annuity to be paid during the life of the vendor, see *Coles v. Trecothick*, 9 Ves. Jun. 246, *Jackson v. Lever*, 3 Brow. Ch. Ca. 605, the clause in the text may declare,

“That the death of the said (*vendor*) before the completion of the said contract, although no payment of the said annuity shall have become due, or having become due shall not have been paid or tendered, (unless the same shall have been lawfully demanded) shall not vacate the contract, but upon payment of the said annuity up to the decease of the said (*vendor*) the same shall continue and be in full force and effect.”

Sale by tenants
in common.

Also where the estate is purchased of persons who are tenants in common, it will, to prevent disputes, be proper to declare,

“That in case either of the said (*vendors*) shall depart this life before the completion of the said purchase, and the legal representative of the person so dying shall be an infant, or under any legal disability, the said (*purchaser*) his heirs or assigns, shall be at liberty,” &c. *as in note* (24).

Subsisting con-
tracts of leases
to be confirmed.

(26) If the vendor have previously to the sale entered into any agreements for leases which are only binding personally on him; or if leases granted by the vendor be considered of doubtful validity by reason of the premises having been in mortgage at the time, or the like, it may be proper to add,

“That the said (*purchaser*) shall ratify and confirm all subsisting leases and contracts for leases granted or entered into by the said (*vendor*) previously to the date of these presents, according to the spirit and true intent and meaning thereof respectively, notwithstanding any rule of law or equity which might impeach the same.”

of the said premises, or of any part thereof (27), without the consent in writing of the said (*purchaser*) (28).

And it is hereby lastly agreed, that if any of the title deeds or writings relating to the said premises shall concern other property of the said (*vendor*), of greater or equal value, they shall be retained by him on his delivering, at his own expense, true and attested copies thereof, duly stamped, and entering into a usual and proper covenant, for producing the originals thereof. And that like copies of all deeds and writings relating

PURCHASES.

AGREEMENTS.

*Freeholds,
short form.*

Title deeds if relating to property of equal or greater value to be retained by vendor.

(27) If there be any timber upon the premises which is to be taken by the purchaser, add, Timber.

“ Nor cut down any timber or timberlike trees now growing upon the said premises.”

(28) If the contract for the purchase be made by two or more persons, it will be proper to add a clause as between themselves, Purchase by two or more persons.

“ That if any default shall be made by either of the said (*purchasers*) or their respective representatives, in payment of his or their share of the said purchase money, and the same shall be paid by the other of them, then, notwithstanding anything hereinbefore contained, the premises so hereby agreed to be conveyed to the said (*purchasers*) shall be conveyed and assured unto such of the said parties only as shall have so paid his said purchase money, and in such manner as the counsel of such purchaser shall advise, to the end and intent that the same may be a security to him, his executors and administrators, for the repayment by the other of the said parties, of the sum so by him advanced, with interest after the rate of £5 per cent. per annum.”

Without which clause the person advancing the money will not, it seems, have any lien upon the estate for his money. See *Wood v. Birch*, and *Wood v. Norman*, cited *Sugd. Vend. and Pur.* 5 Edit. 526.

PURCHASES.

AGREEMENTS.

Freeholds,
short forms.Sum of £ by
way of liqui-
dated damages
payable by
either party on
non-perform-
ance.Purchaser
taking posses-
sion.

to other property of the said (*vendor*) of inferior value, and delivered to the said (*purchaser*) shall, if required by the said (*vendor*) be made and delivered to him or them, at his or their own expense, and a like covenant for the production of the originals thereof, be executed by the said (*purchaser*) (29).

And for a due performance of the several stipulations and agreements, hereinbefore contained,

(29) If immediate possession be an object with the purchaser, and delays are likely to arise in the investigation of the title, he may be let into possession on the execution of the articles, upon a proviso being added, that,

“ It is hereby expressly declared and agreed, that the possession so agreed to be taken of the said premises, by the said (*purchaser*) his heirs or assigns, shall not in anywise prejudice or affect the right of him or them to investigate the title to the said premises, or to reject the same if disapproved by his or their counsel.”

But without such a clause the taking possession may be deemed a waiver of objections to the title, *Fludyer v. Cocker*, 12 Ves. 25. And see *Colton v. Wilson*, 3 P. Wms. 193. *Calcraft v. Roebuck*, 1 Ves. Jun. 224. *Vancouver v. Bliss*, 11 ib. 458. Sed vid. *Hearn v. Tomlin*, Peak. Ca. 192, *Sugden, Vend. and P.* 10.

Money con-
tracted to be
laid out in land,
becomes realty.

Money contracted to be laid out upon land, and land contracted to be purchased, become reciprocally one the other, by construction of equity, and will belong to the real or personal representatives accordingly. See *Elem. Conv.* vol. I. p. 6, 2d edit. and see *Whitmore's case*, 7 Ves. Jun. 436. But if the purchase go off after the contract for want of title, this conversion will not take place, *Buckmaster v. Harrop*, 7 Ves. 341. *Rose v. Cunningham*, 11 ib. 550. So where a contract of purchase is not so far completed in the lifetime of the ancestor, as to be conclusive on the parties, the heir will not be entitled to have it completed out of the personal estate, *Savage v. Carroll*, 1 Ball and Beat. 265, 281. In these cases, therefore, if the parties desire, in favour of their respective representatives, that

on the part and behalf of the said (*vendor*) and (*purchaser*) respectively, each of them the said parties doth hereby bind himself, his heirs, executors, and administrators, unto the other of them, his executors, administrators, and assigns, in the sum of £ , to be taken and considered as liquidated and settled damages between them, and not as *in terrorem*, or by way of penalty (30).

PURCHASES.

AGREEMENTS.

Freehold,
short form.

IN WITNESS whereof the said (*vendor*) and (*purchaser*) have hereunto interchangeably set their respective hands (31), the day and year first above written.

the conversion should notwithstanding be considered as having taken place, it will be proper to declare,

“ ‘That although the present contract should not be carried into execution, the said sum of £ shall, as between the real and personal representatives of the said (*purchaser*), be considered as land, and the said premises, as between the real and personal representatives of the said (*vendor*), be considered and taken as money, and the same respectively shall go and be transmitted accordingly.”

Equitable conversion not to take place.

(30) If a penalty be preferable to a sum by way of liquidated damages, See *ante*, No. I. p. 15, n. (30), say,

Nomine penne.

“ Doth bind himself unto the other of them in the penal sum of £ .”

(31) If the contract be made by an agent or attorney, on the part of the vendor or purchaser, say,

Purchase, &c. by an agent.

“ IN WITNESS whereof, the said (*attorney*) by virtue of a power or authority enabling him in that behalf (a copy whereof is hereunto annexed) has hereunto set the name of the said (*vendor*) [or (*purchaser*) as the case may be] the day and year first above written.”

And let the agent accordingly subscribe the name of his principal. See *White v. Cuyler*, 6 Durn. and E. 176. *Wilks v. Back*, 2 East, 142.

PURCHASES.

AGREEMENTS.

Copyholds.

No. III.

An Agreement (1) for the Purchase of a Copyhold Estate of Inheritance.

ARTICLES OF AGREEMENT entered into this
 day of in the year BETWEEN
 (*the vendor*) (2*v*) of, &c. for himself (3), his heirs (4),
 executors, and administrators of the one part, and
 (*the purchaser*) of, &c. for himself, his heirs, exe-
 cutors, administrators, and assigns, of the other
 part, as follow, (that is to say :)

Agreement for
 sale at sum of
 £ .

The said (*vendor*) doth hereby agree to sell,
 and the said (*purchaser*) doth agree to purchase,
 the inheritance (5*v*) in fee simple and in pos-
 session according to the custom of the manor, of
 ALL that Customary or Copyhold messuage, &c.
 together with all that piece or parcel of arable
 land abutting, &c. and containing by estimation
 acres customary measure, more or less, at

Purchase, &c.
 by an agent.

Wife barred of
 freebench by
 contract for sale.

Moiety, &c.

(1) See *ante*, No. I. p. 1, n. (1).

(2) If the contract be entered into by an agent for either
 party, See *ante*, No. II. p. 19, n. (1).

(3) The right of the widow to freebench of lands of which the
 husband died seized will be barred by his agreement for sale,
 although he die before the surrender, *Hinton v. Hinton*. 2 *Ves.*
 631.

(4) See *ante*, No. I. p. 2, n. (2).

(5) If the vendor have an undivided moiety or other portion
 only of the premises, See *ante*, No. II. p. 21, n. (3).

or for the price (6 *v*) or sum of £ , to be paid at the time and in the manner hereinafter mentioned (7 *v*).

AND the said (*vendor*) doth promise and agree to deliver unto the said (*purchaser*) within one calendar month (8) from the date hereof, a full and satisfactory abstract (9 *v*) of the title of him the said (*vendor*) to the said premises.

AND also on or before the day of next ensuing, upon receiving (10 *v*) from the said (*purchaser*) the said sum (11 *v*) of £ duly to surrender the said premises (12 *v*) into the hands of the lord of the said manor according to the custom thereof, to the use of the said (*purchaser*), his heirs, and assigns, or as he or they shall direct, to be holden at the will of the lord according to

PURCHASES.

AGREEMENTS.

Copyholds.

Vendor to furnish abstract of title in a given time.

And on payment of purchase money to surrender.

(6) If the consideration be a transfer of money in the funds, See *ante*, No. II. p. 21. n. (5).

Consideration a transfer of stock.

If part of the consideration be an annuity to be paid to the vendor during his life, See *ibid*.

Consideration an annuity.

(7) If the subject of the purchase be an house, and the fixtures or furniture are to be taken at a valuation, See *ante*, No. II. p. 22. n. (6).

Fixtures, &c. to be taken at a valuation.

If part of the purchase money is to be secured on the premises, See *ante*, No. II. p. 23, note.

Part of purchase money to be secured on the premises.

(8) See *ante*, No. I. p. 5, n. (8).

(9) If the purchaser is to take subject to all casual defects of title, See *ante*, No. II. p. 24. n. (7).

Purchaser to take subject to defects.

(10) If the consideration for the purchase be a transfer of money in the funds, See *ante*, No. II. p. 24, n. (8).

Consideration a transfer of stock.

(11) If part of the purchase money is to remain on the security of the premises, See *ante*, p. 24, n. (9).

Part of money to remain.

If the consideration be an annuity, See *ibid*.

Consideration an annuity.

(12) If the vendor have a moiety or other portion only of the premises, See *ante*, No. II. p. 25, n. (10).

Moiety, &c.

PURCHASES.

AGREEMENTS.

Cop. holds.

All persons interested to join.

the custom of the said manor, by the rents and services heretofore due, and of right accustomed, free from all incumbrances (13 *v*).

AND it is hereby agreed that all persons in any-wise interested in the said premises, or entitled to the purchase money thereof, shall if required join in assuring the said premises unto the said (*purchaser*) according to their respective estates and interests therein.

Surrender to be accompanied by covenants for title.

And it is further agreed that the said (*vendor*) shall at the time of such surrender enter into the usual covenants for the title, quiet enjoyment, and further assurance of the said premises, which said covenants shall be prepared by and at the expense of the said (*purchaser*) (14), who shall also bear and pay the expense of such surrender (15), together with all fees and fines, whether arbitrary or certain, which shall be due upon the surrender

And be at purchaser's expense.

Incumbrances.

(13) If the premises are subject to a mortgage or other incumbrance against which the purchaser is to indemnify the vendor, See *ante*, No. II. p. 25, n. (11).

(14) See *ante*, No. I. p. 5, n. (11).

Expense of admittance, fines, &c, to be paid by purchaser.

(15) The expense of admittance (including the fine payable to the lord) belongs to the purchaser; and as it is held that the fine is not due until *after* admittance (till when the title of the purchaser is incomplete) it is payable by the purchaser in the first instance, even though the vendor have agreed to surrender and assure them at his own expense, 1 Roll. Ab. 506. A. pl. 1. Hobart *v.* Hammond, 4 Co. 28. Rex *v.* Lord of the Manor of Hendon, 2 Durn. and E. 484. Graham *v.* Sime, 1 East, 632; but see now the stamp act 48 Geo. 3, c. 149, s. 34, which authorises stewards "*previously* to the acceptance of any surrender, or the granting or making of any admittance, voluntary grant, or license to demise in court, to demand the payment of all fees for the same, and for the copy of court roll."

of or admission to the said premises (16 v). PROVIDED nevertheless that in case the said premises shall be subject to any incumbrance the same shall if required by the said (*purchaser*) be paid off, or otherwise satisfied by the said (*vendor*) and the estate exonerated therefrom previously to the surrender so to be made as aforesaid, by separate instruments (17) to be prepared or approved of by the counsel of the said (*purchaser*) at the expense of the said (*vendor*) (18 v).

PURCHASES.

AGREEMENTS.

Copyholds.

Incumbrances
to be previously
paid off.

AND the said (*purchaser*) doth hereby promise and agree upon the making of such surrender and the execution of such covenants as aforesaid, to pay unto the said (*vendor*) (19 v) the said purchase money or sum of £ in lawful current money of Great Britain, or notes of the Governor and Company of the Bank of England (20 v).

Purchaser on
surrender to pay
purchase money.

AND it is hereby agreed that the said (*purchaser*), on payment of the said purchase money, shall be intitled to the rents and profits of the said

Purchaser to
be entitled to
rents from last
quarter day.

(16) If it is necessary that the contract should be carried into effect under the sanction of the Court of Chancery, See *ante*, No. II. p. 26, n. (12).

Contract to be
executed by
Chancery.

(17) See *ante*, No. I. p. 7, n. (14).

(18) If the premises are subject to incumbrances which the vendor is unable to discharge without receiving part of the purchase money, See *ante*, No. II. p. 27, n. (13).

Incumbrances.

(19) If part of the purchase money is paid down on signing the agreement, see *ante*, No. II. p. 28, n. (14.)

Part of money
paid down.

If part of the purchase money is to be secured on the premises, see *ibid*.

Part retained.

(20) If the vendor have a moiety only of the premises, and is to have an increased price if he can procure the sale of the remaining moiety, see *ante*, No. II. p. 29, n. (14.)

Moiety, &c.

PURCHASES.**AGREEMENTS.***Copyholds.*

If purchase not completed on day appointed interest to be paid for purchase money.

If title prove defective, articles to be void.

premises from the day of now last past ; up to which time all outgoings shall be discharged by the said (*vendor*) (21 v).

AND further that if the said surrender cannot be perfected and such covenants prepared by the said day of , the said (*purchaser*) shall pay interest (22 v) for the said purchase money after the rate of 5*l.* per cent per annum, from the time from which he shall be intitled to the rents and profits of the said premises (23), until the perfecting of the said surrender, and the payment of the said purchase money.

AND further that if a clear and marketable title free from incumbrances (24) cannot be deduced of the whole (25 v) of the said premises, or the said surrender shall not be perfected by the time hereby appointed for the completion of the said purchase, or within two calendar months next thereafter, or if all persons interested in the said premises, or intitled to the said purchase money, shall not join in assuring the same to the said (*purchaser*) (26 v)

Purchaser to be at liberty to relinquish.

(21) If the purchaser is to be at liberty to relinquish the purchase either at pleasure or for some assignable cause, See *ante*, p. 29, n. (17).

Exchequer bills.

(22) If the purchase money is to be invested in Exchequer Bills, See *ante*, No. II. p. 30, n. (18).

(23) See *ante*, No. I. p. 9, n. (17).

(24) See *ibid*, n. (18).

Moiety, &c.

(25) If the vendor have a moiety or other portion only of the premises, See *ante*, No. II, p. 31, n. (20).

(26) If the vendor have only a moiety, and the purchaser is to be at liberty to rescind the contract if he cannot obtain possession of the other moiety, See *ante*, p. 31, n. (21).

or if the said (*vendor*) shall become a bankrupt (27) then and in either of the said cases this present contract shall, at the option of the said (*purchaser*), be absolutely void (28 *v*), unless such defect shall extend to a very inconsiderable part only of the said premises, in which case a reasonable abatement shall be made by the said (*vendor*). And it is hereby agreed that in case the said contract shall be abandoned for defect of title, all reasonable costs and expense paid or sustained by the said (*purchaser*) in investigating the said title, or in insuring the said premises against loss by fire, shall be borne and paid by the said (*vendor*) (29 *v*).

PURCHASES

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AND further that (*errors in description shall not vacate the contract*). See *ante*, No. II. p. 32.

AND further that (*intervening accidents shall not vacate the contract*). See *ante*, No. II. p. 33.

AND it is hereby lastly agreed that (*title deeds, if relating to property of equal or greater value, shall be retained by vendor*). See *ante*, No. II. p. 35.

AND (*sum of £ by way of penalty, or liquidated damages payable by either party on non-performance*). See *ante*, No. II. p. 37.

IN WITNESS, &c. (30).

(27) See *ante*, No. I. p. 10, n. (21).

(28) If part of the purchase money is to be paid down at the time of signing the agreement, See *ante*, p. 32, n. (22).

Part of money paid down.

(29) If the purchaser is to be let into possession, See *ante*, No. II. p. 32, n. (23).

Purchaser to be let into possession.

(30) If the contract be entered into by an agent for either party, See *ante*, No. II. p. 37, n. (31).

Contract by agent.

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Copyholds

SUGGESTIONS

TO THE

SOLICITORS OF THE PARTIES.

I. THE SOLICITOR OF THE VENDOR.

*Duty of Vendor's
Solicitor.*

Vendor should
reconsider his
will.

Abstract of
title, &c.

IN the practical remarks introduced in the INTRODUCTION to the purchase of estates, it was said that the vendor's solicitor should, upon the execution of an agreement, for the purchase of *Freehold* premises, apprise his client of the alteration which a contract for sale would, by the rules of equity, make in the nature of the property, by induing it with the qualities of personality. See *ante*, INTRODUCTION, sects. I. II. The same rules apply, and the same remarks are therefore applicable to *Copyholds*.

So also are those which regard the form, time of delivery, and other circumstances relative to the abstract of title, &c. &c. but with these additions; namely, that if the title be founded on, or be deduced through the will of a testator who died prior to the operation of the stat. of 55 Geo. III., c. 192, i. e. the 12th of July, 1815, the solicitor should ascertain whether the premises were previously surrendered by the testator to the use of his will; and if they were not, then he should state in the abstract the relationship of the devisee to the deviser, or the character or situation in which the devisee stood with respect to the testator, in order that the purchaser's counsel may see to what extent the want of such surrender is material; but if the testator died subsequently

to the time of the operation of the act of 55 Geo. III. c. 192, this will not be required, as the statute renders a previous surrender of copyholds to the use of a person's will dying after that act, unnecessary.

PURCHASES.

AGREEMENTS.

Copyholds.

II. THE SOLICITOR FOR THE PURCHASER.

The observations made in the INTRODUCTION just referred to, relative to the duty of the purchaser's solicitor on the part of his client on the purchase of a *Freehold*, may here be applied to the purchase of a *Copyhold* estate, except that those made relative to the necessity of the purchaser republishing his will previously made, in order to pass them under a residuary devise, do not apply to copyholds, as these will pass without being expressly mentioned, *Heylyn v. Heylyn*, Cowp. 130. *Hillier v. Woodford*, 13 Ves. 209, so that prior to 55 Geo. III. they were surrendered to the use of his will; and since this act, even that circumstance is unnecessary.

The duty of the Purchaser's Solicitor.

Republication of purchaser's will.

Nor is a search for judgments on the purchase of copyholds necessary, as it is in the case of freeholds, they not being liable be taken in execution, lest the lord should have a new tenant brought into the manor without his consent. *Cannon v. Pack*, 6 Vin. Abr. Co. Cop. S. 21. 3 Co. 9 a. 2 Inst. 337.

Search for judgments not necessary.

PURCHASES.

AGREEMENTS.

Leaseholds.

No. IV.

An Agreement for the Purchase of Leasehold Premises.

Parties.

ARTICLES OF AGREEMENT (1) entered into ~~this~~
 day of in the year , Between
 (*the vendor*) (2 *v*) of &c. [for himself, his exe-
 cutors, and administrators (3)], of the one part, and
 (*the purchaser*) of &c. [for himself, his executors,
 administrators, and assigns, of the other part], as
 follow: (that is to say)

Agreement for
purchase.

THE said (*vendor*) doth hereby agree to sell,
 and the said (*purchaser*) doth agree to take, at
 the price or sum of £ , (4 *v*) to be paid at the
 time and in the manner hereinafter mentioned,

Agreement
must be in
writing.

(1) An agreement for the assignment of a lease will not be binding on the parties unless it be in writing; the statute of frauds, 29 Car. 2. c. 3. s. 4, extending as well to subsisting interests as to interests created *de novo* out of an estate. See Anon. 1 Vent. 361, and see also Griffith v. Young, 12 East, 514.

Purchase, &c.
by an agent.

(2) If the contract be entered into by an agent for either party, see *ante*, No. II. p. 19, n. (1).

Executors
bound although
not named.

(3) An agreement for the sale of a leasehold or chattel interest will be binding on the executors or personal representatives of the parties, although not expressly named, see Smith v. Watson, Bunb. 55. the words within brackets may therefore be omitted.

Consideration
a transfer of
stock.
An annuity.

(4) If the consideration be a transfer of money in the funds, see *ante*, No. II. p. 21. n. (5).

If it be an annuity to be paid to the vendor during his life, see *ibid*.

ALL (5 *v*) that leasehold messuage, &c. situated, &c. with the piece or parcel of meadow ground abutting and adjoining, &c. containing by estimation acres (6) be the same more or less, for the residue (7) now to come of a term of years, commencing from the day of , granted to the said (*vendor*) by an indenture of lease, bearing date the day of , in the year , and expressed to be made between, &c. but under and subject to the rents, covenants, and agreements therein reserved and contained on the part of the tenant, lessee, or assignee thereof, to be respectively paid and performed.

PURCHASES.

AGREEMENTS.

Leaseholds.

AND it is hereby agreed that all fixtures (8 *v*) now upon the said premises, shall be taken by the said (*purchaser*) at a valuation to be made thereof by two appraisers, one to be chosen by the said (*vendor*), and the other by the said (*purchaser*), and in case of difference between them, then by a third appraiser, to be by such two appraisers named, and the amount of such valuation paid by the said (*purchaser*) at the time of the execution of the assignment of the said premises.

Fixtures to be taken at a valuation.

(5) If the vendor have an undivided moiety or other portion only of the premises, see *ante*, No. II. p. 21, n. (3).

Moiety, &c.

(6) See *ante*, No. I. p. 3, n. (5).

(7) Under an agreement for the residue of an old term, a purchaser will not be compellable to take a new lease, the former being more advantageous. See *Mason v. Corden*, 7 Taunt. 9.

Purchaser not liable to take a new lease.

(8) If the furniture be also to be taken at a valuation, add,

Furniture to be taken at a valuation.

“And all and every the articles of household and other furniture, utensils, and things now in or upon the said messuage or dwelling-house, and premises.”

PURCHASES.**AGREEMENTS.***Leaseholds.*

Vendor to deliver abstract of title within a given time.

AND the said (*vendor*) doth promise and agree, to deliver unto the said (*purchaser*), within one calendar month from the date hereof, a full and satisfactory abstract of the title (9*v*) of him the said (*vendor*) to the said premises, from the commencement of the said term, but not of the title of the ground or other superior landlord of the reversion or inheritance of the said premises (10), nor of any surrendered lease or leases (11).

Purchaser to take subject to defects.

Purchaser may require the production of lessor's title.

(9) If the purchaser is to take subject to all casual defects of title, see *ante*, No. III. p. 24. n. (7).

(10) It was for a long time a matter of contention whether the purchaser of leasehold premises had a right to require the vendor to show the title of his lessor, see *Gwillim v. Stone*, 3 Taunt. 433, *Keech v. Hall*, 1 Dougl. 21, *Waring v. Mackreth*, Forrest. 129, *White v. Foljambe*, 11 Ves. 337, *Gompertz v. ———*, 12 ib. 17; but subsequently a distinction was adopted by the Courts (and which appears now to have become a settled rule), that where the benefit of the contract is insisted upon by the vendor as against the purchaser, the purchaser shall not be compelled to perform it, unless the vendor can substantiate the validity of the lease by showing a good title in the lessor to the freehold out of which it is derived; but that if the purchaser insist upon an execution of the contract by the vendor, he must be contented with such evidences of title as are within the vendor's reach; a distinction which seems founded upon sound principles of equity, as whilst on the one hand it protects the purchaser from having a doubtful title imposed upon him, it on the other protects the vendor against being called upon to furnish what it may not be in his power to produce. See *Fildes v. Hooker*, 2 Merr. 424, *Deverell v. Lord Bolton*, 18 Ves. 505.

Purchaser of bishop's lease not entitled to see lessor's title.

In the case of an estate holden under a bishop's lease, it has been decided that the purchaser is not intitled to call for the production of the lessor's title, *Fane v. Spencer*, cited 2 Merr. 430, n.

Leases under corporations.

(11) This provision is particularly necessary in the sale of

AND ALSO on or before the day of
now next ensuing, upon receiving from the said
(*purchaser*) the said sum of £ (12 *v*), exe-
cute a valid assignment or other proper and
effectual assurance of the said premises (13 *v*)
for the then residue of the said term, and deliver
up the said indenture of lease, and all assign-
ments thereof, if any, unto the said (*purchaser*),
or as he shall direct, free from all incum-
brances (14 *v*), (except only the said rent, cove-
nants (15) and agreements, in the said indenture

PURCHASES.

AGREEMENTS.

Leaseholds.

And on pay-
ment of pur-
chase money,
execute assign-
ment.

renewable leases holden under corporations or other public
bodies, where the present subsisting lease is in general the only
evidence of title a vendor can produce, although such lease by
referring to prior surrendered leases, and therefore furnishing
the purchaser with notice of them, may render him liable to a
defect of title in a former lessee. *Coppin v. Fernyhough*, 2 Brow.
Ch. Ca. 291.

(12) If the consideration of the purchase be a transfer of
money in the funds, see *ante*, No. II, p. 24, n. (8).

Consideration
the transfer of
stock.
Part to remain
on the premises.

If part of the purchase money is to remain on the security of
the premises, see *ibid.* n. (9).

If part of the consideration be the grant of an annuity
during the life of the vendor, see *ibid.*

Consideration,
an annuity.
Moiety, &c.

(13) If the vendor have a moiety or other portion only of the
premises, see No. II. p. 25, n. (10).

(14) If the premises are subject to a mortgage, annuity, or
other incumbrance, see *ante*, No. II. p. 25, n. (11).

Premises subject
to incum-
brances.
Assignee not
liable after
assignment.

(15) Where the vendor is himself an assignee only of the
premises, and has not therefore entered into covenants to pay
the rent, or perform the covenants in the lease, the words
within the parenthesis may be omitted, as the liability of such
assignee ceases on his assigning over to another. See *Taylor v.*
Shum, 1 Bos. and Pul. 21. Nor are they absolutely necessary
to be inserted where the vendor is lessee of the premises, as it
has been held that a purchaser is bound to indemnify the lessee
against the rent and covenants in the lease, although the

Purchaser
bound to in-
demnify vendor
against cove-
nants, &c. in
lease.

PURCHASES. of lease reserved and contained, on the tenant or
AGREEMENTS. lessee's part to be paid and performed.)

Leaseholds.

All persons in-
 terested to join.

AND it is hereby agreed that all persons (16) in anywise interested in the said premises, or intitled to the purchase money thereof, shall, if required, join in the said assignment according to their respective estates and interests.

Assignment to
 be at pur-
 chaser's ex-
 pense.

And it is further agreed that the said assignment shall be prepared by and at the expense (17) of the said (*purchaser*); and shall contain all usual and proper covenants for the title, quiet enjoyment, and further assurance of the said premises, on the part of the said (*vendor*); and also usual and proper covenants on the part of the said (*purchaser*), (unless the said (*vendor*) shall require the same to be by a separate instrument at his own expense) for indemnifying the said (*vendor*) from the rent, covenants and agreements in the said indenture of lease reserved and contained.

Purchase money
 to be paid on
 execution of
 assignment.

AND the said (*purchaser*) doth hereby promise and agree upon the execution of such assignment as aforesaid, to pay unto the said (*vendor*) (18 *v*) the said purchase money or sum of £ , together with the sum at which the said fixtures shall be so valued as aforesaid, in lawful current

vendor may not at the time of the contract have entered into any stipulation for that purpose. See *Pember v. Mathers*, 1 Brow. Ch. Ca. 52. *Stains v. Morris*, 1 Ves. & Bea. 13.

(16) See *ante*, No. I. p. 5, n. (9).

(17) See *ante*, No. I. p. 6, n. (11).

Purchase money
 to remain on
 premises.

(18) If part of the money is to remain on security of the premises, see No. II. p. 28, n. (14).

money of Great Britain, or notes of the Governor and Company of the Bank of England (19 v).

PURCHASES.
AGREEMENTS.
Leaseholds.

And if required by the said (*vendor*), to execute and deliver unto him a bond in a sufficient penalty, or a deed of covenant at the option of the said (*vendor*), for indemnifying him against the rent, covenants, and agreements in the said indenture of lease reserved and contained, which said bond or deed of covenant shall be prepared by and at the expense of the said (*vendor*).

AND it is hereby agreed that upon payment of the said purchase money, the said (*purchaser*) shall be let into possession, and intitled to the increase and produce of the said premises from the day of now next ensuing, up to which time all rent, taxes, rates, assessments and outgoings shall be discharged by the said (*vendor*).

And purchaser to be intitled to the rents, &c. from the next quarter day.

AND further, that in case no abstract shall be delivered by the said (*vendor*) unto the said (*purchaser*) within the space of one calendar month from the date hereof, or the said assignment shall not be perfected by the said day of , then the contract hereby entered into for the said purchase shall be wholly void to every intent and

If purchase not completed on day appointed, articles to be void.

(19) If the premises are in mortgage or otherwise incumbered, see No. II. p. 27, n. (13).
If it be necessary to apply to a court of equity to complete the contract, see No. II. p. 26, n. (12).
If the purchaser is to be at liberty to relinquish the purchase either at pleasure or for some assigned cause, see *ante*, No. II. p. 29, n. (17).

Premises in mortgage.
Application to Chancery.
Purchaser to be at liberty to relinquish.

PURCHASES.**AGREEMENTS.***Leaseholds.*

If title defective,
articles to be
void.

purpose, it being the true intent and meaning of the said parties that a strict observance of the time hereinbefore appointed for the completion of the said purchase shall be deemed as of the essence of the said contract (20), without reference or appeal to any court of law or equity.

AND further, that if a clear and marketable title cannot be deduced (21) of the said premises for the whole of the said term, or if all persons interested in the said premises, or intitled to the said purchase money, shall not join in the said assignment, or if the said (*vendor*) shall become a bankrupt (22), or derive his title under a will, and the executors of the testator shall refuse to concur in or assent to the assignment, or if the licence or consent of the lessor shall be requisite or necessary, to enable the said (*vendor*) to dispose of the

Time should be
made of the
essence of the
contract.

(20) As a leasehold estate is daily decreasing in value, it is necessary that some provision should be made for the event of any considerable delay in the completion of the purchase. In the case of *Dyer v. Hargrave*, 10 Ves. jun. 505, the Master of the Rolls thought the reasonable course was, that a rent should be set upon the premises in respect of the possession of the vendor, and interest be paid by the purchaser, (the premises from the time of the contract being considered in equity as belonging to the purchaser) but as the reasonable quantum of such rent may be the subject of doubt, the better mode seems to be that the time limited for the completion of the purchase should be made of the essence of the contract on the part of the purchaser, and more particularly so since the Court will not apportion the price for the time which has elapsed, *King v. Wightman*, 1 Anstr. 80.

(21) See *ante*, No. I. p. 10, n. (19).

(22) See *ibid.* n. (21).

said premises, and the same shall not be obtained by the time aforesaid (23), then and in either of the said cases this present contract shall at the option of the said (*purchaser*) be absolutely void (24 *v*), unless such defect shall extend to a very inconsiderable part only of the said premises or of the said term, in which case a reasonable abatement shall be made by the said (*vendor*) in respect thereof. And it is hereby agreed that in case the said contract shall be abandoned for defect of title, all reasonable costs and expenses paid or sustained by the said (*purchaser*) in investigating the said title, or in insuring the said premises against loss by fire, shall be borne and paid by the said (*vendor*) (25 *v*).

PURCHASES.

AGREEMENTS.

Leaseholds.

AND further, that any trifling error or omission which may appear to have been made in the description hereinbefore inserted of the said premises, or of the term of years now to come therein, (so that such term be an original, and not an under or derivative term) shall not vacate the present contract, but a reasonable abatement shall be made or equivalent given, as the case may require; the amount of which shall in case of dif-

Errors in description, &c. not to vacate the contract.

(23) If the lease contain a restriction against assigning, it is incumbent on the vendor, and not on the purchaser, to procure the lessor's license, *Lloyd v. Crisp*, 5 Taunt. 249. *Mason v. Corder*, 7 *ibid.* 9. 2 Marsh. 332, S. C.

Vendor must procure lessor's license.

(24) If part of the purchase money is to be paid down at the time of the signing the agreement, see *ante*, No. II. p. 32, n. (22).

Part of purchase money paid down.

(25) If the purchaser is to be let into immediate possession, see *ante*, No. II. p. 32, n. (23).

Immediate possession.

PURCHASES.

AGREEMENTS.

Leaseholds.

The contract
not to be affect-
ed by interven-
ing accidents.

ference between the parties be submitted to the determination of three surveyors, to be chosen in the usual manner.

AND lastly, that any loss or damage which may happen to the said premises by fire, storm, or tempest, at any time between the date hereof, and the completion of the said purchase (26), shall not in anywise vacate or affect the present contract (27 v).

AND (*sum of £ by way of liquidated damages or penalty payable by either party on non-performance of the agreement*). See *ante*, No. II. p. 37.

IN WITNESS, &c. (28 v).

Consideration
an annuity.

(26) See *ante*, No. I. p. 13, n. (28).

(27) If the consideration for the purchase be an annuity to be paid during the life of the vendor, see *ante*, No. II. p. 34, n. (25).

Sale by tenants
in common.

If the estate be purchased of persons who are tenants in common, see *ibid*.

Purchase by
two or more.

If the contract for the purchase be made by two or more persons, see *ante*, No. II. p. 35, n. (28).

Immediate pos-
session.

If immediate possession be an object with the purchaser, see *ante*, No. II. p. 36, n. (29).

Contract by
agent, &c.

(28) If the contract is entered into by an agent for either party, see *ante*, No. II. p. 37, n. (31).

PURCHASES.

AGREEMENTS.

Leaseholds.

SUGGESTIONS

TO THE

SOLICITORS OF THE PARTIES.

I. THE SOLICITOR OF THE VENDOR.

*Duty of Vendor's
Solicitor.*

THE observations made in the INTRODUCTION relative to the propriety of the vendor altering or republishing his will after a contract for the sale of freehold premises, do not so forcibly apply to leaseholds, as they are in notion of law of the same nature as money, and consequently the money arising from the sale will belong to the same species of representatives as those to whom the premises themselves would have gone had no sale taken place. If, however, the premises have been previously specifically bequeathed by the vendor, it behoves him, if such be his wish, to make a substitutionary bequest to such legatee in lieu of the benefit originally intended for him, as the contract for sale will operate as a revocation of such bequest, even though the sale should afterwards go off.

Republication
of vendor's will
not necessary.

With respect to the abstract of the vendor's title, the observations already made regarding freeholds appear to be sufficiently applicable to leaseholds to render a repetition of them unnecessary.

*Abstract of
title.*

PURCHASES.

 AGREEMENTS.

Leaseholds.

Duty of Purchaser's Solicitor.

Purchaser need not republish his will.

II. THE SOLICITOR FOR THE PURCHASER.

It was remarked in the observations relative to a purchase of freeholds that on such purchase a republication of the devisor's will becomes necessary to pass them, but this is not requisite of leaseholds, which will pass by any general words sufficient to comprehend them, although they were not in the testator's possession at the date of his will.

Corporation.

A distinction has been attempted to be made in the introductory remarks just alluded to, as to where it is of importance that an agreement should be put into writing and where not, and also where the contract should be carried into effect without delay; to which all that it seems necessary to add here, is that if the agreement be for the sale of a lease granted by a corporation, the solicitor of the purchaser should urge its being immediately carried into execution, as it is doubtful whether in case of the decease of a member and the introduction of a new one, he would be bound by the contract, see *Winne v. Bampton*, 3 Atk. 476.

Searching for judgments.

With respect to the searching for judgments, &c. the better opinion is that they do not attach upon leaseholds until a writ of execution has actually issued, and consequently that no search need be made for them.

As to what else it belongs to the purchaser's solicitor to perform or attend to from the commencement to the completion of the contract, see *ante*, INTRODUCTION.

PURCHASES.

AGREEMENTS.

Freehold, Copy-
hold, and Lease-
hold.

No. V.

*An Agreement for the Purchase of Freehold, Copy-
hold, and Leasehold, Premises.*

ARTICLES OF AGREEMENT entered into this
day of in the year

Between (*the vendor*) of, &c. (1 *v*) for himself (2),
his heirs, executors, and administrators, of the one
part, and (*the purchaser*) of &c. for himself, his
heirs, executors, administrators, and assigns, of
the other part, as follow: (that is to say)

THE said (*vendor*) doth hereby agree to sell, and the said (*purchaser*) doth agree to purchase the inheritance (3 *v*) in fee simple and in possession of ALL those freehold lands, &c. containing by estimation acres statute measure, more or less. And the inheritance according to the custom of the manor, of ALL that copyhold or customary messuage, &c. with the lands thereunto adjoining, containing by estimation acres customary measure, more or less. And also ALL those lease-

Agreement for
purchase.

(1) If the agreement be entered into by an agent on the part of either the vendor or purchaser, See *ante*, No. II. p. 19, n. (1). Contract by agent.

(2) See *ante*, No. I. p. 2, n. (2).

(3) If the vendor have a moiety or other portion only of the premises, See *ante*, No. II. p. 21, n. (3). Moiety, &c.

PURCHASES.**AGREEMENTS.**

*Freehold, Copy-
hold, and Lease-
hold.*

hold messuages, &c. for the residue now to come of a term of years, commencing from the day of , granted to the said (*vendor*) by an indenture bearing date the day of , and made between, &c. free from all incumbrances, at or for (4 *v*) the price or sum of £ (5 *v*), to be paid at the time and in the manner hereinafter mentioned (6 *v*).

Vendor to furnish abstract of title within a given time.

And the said (*vendor*) doth promise and agree to deliver unto the said (*purchaser*) within one

So many years purchase.

Manor.

(4) If the estate is sold after the rate of so many years purchase, See *ante*, No. II. p. 21, n. (4).

And if the premises consist of a manor, add,

“AND it is agreed that the annual value of the fines and heriots, payable in respect of the copyhold premises holden of the same manor upon the alienation or decease of the tenants thereof, shall be estimated or computed by two indifferent persons, to be chosen one by the said (*vendor*), and the other by the said (*purchaser*), and the number of years purchase, and the amount thereof on an average of a period of years, shall be added to the amount of the rental of the said hereditaments for a like period.”

Timber separately valued.

(5) If the timber on the freehold part of the estate is to be separately valued, add,

“Exclusively of timber.”

Consideration a transfer of stock.

If the consideration be a transfer of money in the funds, See *ante*, No. II. p. 21, n. (5).

Consideration an annuity.

If part of the consideration be an annuity to be paid to the vendor during his life, See *ibid*.

Fixtures.

(6) If part of the premises consist of a house, and the fixtures or furniture are to be taken at a valuation, See *ante*, No. II. p. 22, n. (6).

Timber.

If the timber is to be separately valued, See *ibid*.

Purchase money to remain.

If part of the purchase money is to remain on the security of the premises, See *ibid*.

calendar month from the date hereof, full and satisfactory abstracts (7 v) of the title of him the said (*vendor*) to the said freehold, copyhold, and leasehold premises respectively, but not of the title of the superior or ground landlord of the said leasehold premises, nor of any surrendered lease or leases thereof.

AND on or before the day of
now next, upon receiving (8 v) from the said (*purchaser*) the said sum of £ (9 v), to execute proper conveyances, surrenders, and assurances of all and singular the said freehold, copyhold, and leasehold premises, according to the nature and quality of the same respectively, unto or to the use of the said (*purchaser*), his heirs, executors, administrators, and assigns, or as he or they shall direct, free from all incumbrances, except the quit rents and the customary dues and services, payable or to be performed in respect of the said copyhold premises, and the rent, covenants, and agreements in the said indenture of lease reserved and contained, on the part of the lessee, assignee, or tenant of the said leasehold premises, to be respectively paid, performed, and observed (10 v).

PURCHASES.

AGREEMENTS.

Freehold, Copyhold, and Leasehold.

And on payment of purchase money, execute conveyance.

(7) If the purchaser agrees to buy subject to all casual defects of title, See *ante*, No. II. p. 24, n. (7).

(8) If the consideration be a transfer of money in the funds, See *ante*, No. II. p. 24, n. (8).

(9) If part of the purchase money is to remain on the security of the premises, See *ibid*, n. (9).

If part of the consideration be an annuity during the life of the vendor, See *ibid*.

(10) If the premises are subject to a mortgage, annuity, or other incumbrance, See *ante*, No. II. p. 25, n. (11).

Purchaser to take subject to defects.

Consideration a transfer of stock.

Money to remain.

Consideration an annuity.

Incumbrances.

PURCHASES.

AGREEMENTS.

Freehold, Copyhold, and Leasehold.

All persons interested to join.

Conveyance to be at purchaser's expense.

And it is hereby agreed that all persons in any wise interested (11) in the said freehold, copyhold, and leasehold premises, or any of them, or intitled to the purchase money thereof, shall, if required, join in the said conveyances, surrenders, and assurances, according to their respective estates and interests.

AND it is further agreed that all such conveyances, surrenders, and assurances as aforesaid, shall be prepared by (12) or at the expense (13) of the said (*purchaser*), and shall contain or be accompanied by all usual and other proper covenants (14), for the title, quiet enjoyment, and further assurance of the said premises on the part of the said (*vendor*); and also usual and proper covenants on the part of the said (*purchaser*) (unless the said (*vendor*) shall require the same to be by a separate instrument at his own expense), for indemnifying the said (*vendor*) against the rent, covenants, and agreements in the said indenture of lease reserved and contained; but that all fines, recoveries, covenants for the production of title deeds, releases of incumbrances, and assignments of outstanding terms, not heretofore assigned to attend

(11) See *ante*, No. I. p. 5, n. (9).

Surrender of copyholds to be prepared by steward.

(12) The surrender of the copyholds is always prepared by the steward of the manor, at the expense of the purchaser; and the Court will not interfere so as to compel him to receive one prepared by the attorney of the parties. *R. v. Fletcher Rigge*, 2 Barnw. and Ald. 550.

(13) See *ante*, No. I. p. 6, n. (11).

(14) See *ibid*, n. (10).

the inheritance (15), shall be prepared at the expense of the said (*vendor*) (16 v).

PROVIDED nevertheless (*incumbrances to be paid off before conveyance*). See *ante*, No. II. p. 26.

AND the said (*purchaser*) doth promise and agree, upon the execution of such conveyances, surrenders, and assurances as aforesaid, to pay unto the said (*vendor*) (17 v) the said purchase money or sum of £ (18 v) in lawful current money of Great Britain, or in notes of the Governor and Company of the Bank of England (19).

AND if required by the said (*vendor*), to execute and deliver unto him a bond in a sufficient penalty, or a deed of covenant at the option of the said (*vendor*), for indemnifying him against the rent, covenants, and agreements in the said indenture of lease reserved and contained, which said bond or deed of covenant shall be prepared by and at the expense of the said (*vendor*).

PURCHASES.

AGREEMENTS.

Freehold, Copyhold, and Leasehold.

Purchaser on execution of conveyance to pay purchase money.

And give bond for performance of covenants in lease.

(15) See *ante*, No. I. n. (13).

(16) If it be necessary on account of the infancy or other disability of the vendor that the sanction of the Court of Chancery should be obtained, See *ante*, No. II. p. 26, n. (12).

Application to Chancery.

(17) If part of the purchase money is to be paid down at the time of the signature of the agreement, See *ante*, No. II. p. 28, n. (14).

Part of money paid down.

If part of the money is to remain on the security of the premises, See *ibid*.

Money to remain.

(18) If the timber is to be separately valued, See *ante*, No. II. p. 28, n. (15).

Timber.

(19) This stipulation on the part of the purchaser is a charge upon the estate; should the purchaser therefore become insolvent or bankrupt, the vendor will be entitled to the whole of the purchase money, and not be obliged to take a dividend with other creditors, See *Cavell v. Simpson*, 16 Ves. 278.

Purchase money unpaid a lien on the estate.

PURCHASES.

AGREEMENTS.

Freehold, Copy-
hold, and Lease-
hold.

To be intitled to
rents from last
quarter day.

If purchase not
completed by
time appointed
articles to be
void.

AND it is hereby agreed that the said (*purchaser*), on payment of the said purchase money, shall be intitled to the rents and profits (20 *v*) of the said premises from the day of last past (21) up to which time all rent, taxes, rates, assessments, and other outgoings, shall be discharged by the said (*vendor*) (22 *v*).

AND it is further agreed, that in case no abstract shall be delivered by the said (*vendor*) unto the said (*purchaser*) within the space of one calendar month from the date hereof, or the said convey-

Manor.

(20) If the subject of the purchase be a manor, add,

“ Shall be let into immediate possession of the said manor and premises, and intitled to the annual rents and profits thereof. PROVIDED nevertheless, that all arrears of rent due at last (if any), and all fines, perquisites, and casual profits which shall fall in, arise, or be due in respect thereof, at or before the next general court day of the said manor, to be holden on the day of , (and which it is agreed shall be holden by or in the name of the said (*vendor*)), shall belong to and be received by him the said (*vendor*).”

Or, “ The said (*purchaser*) shall be intitled to have and receive for his own use all casual and reserved rents, issues, and profits of the said premises which shall accrue due, or arise, from the day of last past, until the time hereby appointed for the completion of the said purchase, and also all fines for renewal of leases and for admittances due on the decease or alienation of any tenants of the said premises, or otherwise in respect thereof.”

(21) See *ante*, No. I. p. 9, n. (17).

Purchaser to be
at liberty to
relinquish.

(22) If the purchaser is to be at liberty to relinquish the purchase either at pleasure or for some assigned cause, See *ante*, No. II. p. 29, n. (17).

ances, surrenders, and assurances shall not be perfected by the said day of , then the contract hereby entered into shall be utterly void to all intents and purposes; it being the true intent and meaning of the parties hereto, that a strict observance of the time hereinbefore appointed for the completion of the said purchase shall be deemed as of the essence of the said contract (23), without reference or appeal to any court of law or equity.

AND further, that if a clear and marketable title cannot be deduced of the whole of the said freehold, copyhold, and leasehold premises, then this present contract shall, at the option of the said (*purchaser*), be absolutely void, and the said (*purchaser*) shall not be bound to complete the same in respect of those to which a good title can be made, and in such case all reasonable expenses paid or sustained by him in investigating the said title, or in insuring the said premises against loss by fire, shall be borne and paid by the said (*vendor*) (24 v).

AND (*errors in descriptions, &c. not to vacate the contract*). See *ante*, No. II. p. 32.

AND (*the agreement not to be affected by intervening accidents*). See *ante*, No. II. p. 33.

PURCHASES.

AGREEMENTS.

Freehold, Copyhold, and Leasehold.

If title cannot be deduced to whole of the premises, the present articles to be void.

(23) See *ante*, No. IV. p. 52, n. (20).

(24) If part of the purchase money is to be now paid, See No. II. p. 32, n. (32).

If the purchaser is to be let into immediate possession, See *ibid.*

Part of purchase money paid down. Immediate possession.

PURCHASES.**AGREEMENTS.**

*Freehold, Copy-
hold, and Lease-
hold.*

PROVIDED lastly, (*provision as to delivery of title deeds, &c.*) See *ante*, No. II. p. 35.

AND (*sum of £ by way of penalty, or of liquidated damages to be paid by either party on non-performance of the agreement*). See *ante*, No. II. p. 37.

IN WITNESS, &c. (25 v).

Contract by
agent.

(25) If the agreement is to be signed by an agent on the part of the vendor or purchaser, See *ante*, No. II. p. 37, n. (31).

. *As to what it behoves the solicitors of the vendor and purchaser respectively to do on behalf of their clients from the commencement of the contract to its completion or abandonment, See ante, INTRODUCTION, Sec. I. and II. and also ante, p. 44. and p. 55.*

PURCHASES.

AGREEMENTS.

Estate for life.

No. VI.

*An Agreement for the Purchase of an Estate for Life.**Variations where it is for the Vendor's own life, and where for the life of another.*

ARTICLES OF AGREEMENT entered into this day of BETWEEN (*the vendor*), of, &c. for himself (1 *v*), his heirs, executors, and administrators of the one part, and (*the purchaser*) of, &c. for himself, his heirs, executors, administrators, and assigns of the other part, as follow, that is to say, the said (*vendor*) doth hereby agree to sell, and the said (*purchaser*) doth agree to purchase, the life estate and interest of him the said (*vendor*) of and in ALL, &c. at or for the price or sum of £ (2 *v*).

AND the said (*vendor*) doth promise and agree to deliver unto the said (*purchaser*), within the space of one calendar month from the date hereof, a full and satisfactory abstract (3 *v*) of the title of

Vendor to furnish abstract within a given time.

(1) If the contract be entered into by an agent for either party, See *ante*, No. II. p. 19, n. (1).

Purchase, &c. by an agent.

(2) If the consideration be an annuity to be paid to the vendor during his life, See *ante*, No. II. p. 21, n. (5).

Annuity.

If it be a transfer of money in the funds, See *ibid*.

Money in the funds.
Estate pur
autre vie.

(3) If the estate be holden during the life of a third person, say,

"Of the title of him the said (*vendor*) to an estate of freehold in the said premises during the natural life of the said (*cestui que vie*)."

PURCHASE.

AGREEMENTS.

Estate for life.

and appear at
insurance office,and on receiving
purchase
money to ex-
ecute convey-
ance,and deliver
title deeds.All persons in-
terested to join.

Annuity.

Incumbrances.

him the said (*vendor*) to the said premises during the term of his natural life.

AND to appear in person at any office or place of insurance within the cities of London or Westminster, if he shall be required so to do by the said (*purchaser*), and send to such office sufficient vouchers or certificates of the state and condition of his health, for the purpose of enabling the said (*purchaser*) to insure any sum or sums of money upon the life of him the said (*vendor*), if he shall think proper so to do.

And also on or before the day of now next ensuing, upon receiving from the said (*purchaser*) the said sum of £ (4 *v*), to execute proper conveyances and assurances of the said premises unto the said (*purchaser*), his heirs, executors, administrators, or assigns, or as he or they shall direct, during the life of the said (*vendor*), free from all incumbrances (5 *v*).

AND on the completion of the said purchase, deliver over unto the said (*purchaser*) all deeds and other evidences of the title of the said (*vendor*) to the said premises, to the possession or custody whereof he is so intitled as tenant for life as afore-said.

AND it is hereby agreed that all persons in any

(4) If the consideration be an annuity to be paid to the vendor during his life, See *ante*, No. II. p. 24, n. (9).

If the consideration be a transfer of money in the funds, See *ibid.* n. (8).

(5) If the premises are subject to any incumbrance, See *ante*, No. II. p. 25, n. (11).

way interested (6) in the said premises, or intituled to any legal or equitable estate or interest therein during the life of the said (*vendor*), shall, if required, join in the said assurances according to their respective estates and interests.

PURCHASES.

AGREEMENTS.

Estate for life.

AND it is further agreed that all such conveyances and assurances as aforesaid, shall contain all usual and other proper covenants for the title, quiet enjoyment, and further assurance, of the said premises, and shall be prepared by and at the expense (7) of the said (*purchaser*).

Conveyance to contain usual covenants.

AND the said (*purchaser*) doth hereby promise and agree, upon the execution of such conveyances and assurances as aforesaid, to pay unto the said (*vendor*) the said purchase money, or sum of £ in lawful current money of Great Britain, or notes of the Governor and Company of the Bank of England (8 *v*).

Purchaser on execution of conveyance to pay purchase money.

(6) See *ante*, No. I. p. 5, n. (9).

(7) See *ante*, No. I. p. 6, n. (11).

(8) As a particular estate is generally of less value if sold separately, than it would be if annexed to the reversion, there may be added a clause providing for the payment of a further sum to the vendor, if he procure the reversioner to part with his interest in the premises to the purchaser.

Vendor to receive a further sum if reversioner join.

“ THAT in case the said (*vendor*) shall, within the space of calendar months from the date hereof, procure the person or persons who for the time being shall be intituled to the immediate reversion of the said premises, expectant upon the decease of the said (*vendor*), to sell and dispose of the same to the said (*purchaser*), at or for a price not exceeding the sum of £ , he the said (*purchaser*) shall and will thereupon pay to the said (*vendor*) the further sum of £ for the estate and interest so now agreed to be purchased as aforesaid.”

PURCHASES.

AGREEMENTS.

Estate for life.

If purchase not completed on day appointed, articles to be void.

Or if title be defective.

Purchaser at liberty to relinquish, if reversioner will not join.

AND (*purchaser to be entitled to rents from last quarter day*), See *ante*, p. 29.

AND further that in case an abstract shall not be delivered to the said (*purchaser*) by the said (*vendor*), within the said space of one calendar month from the date hereof, or the said conveyance shall not be perfected by the said day of then the contract hereby entered into shall be wholly void (9) to all intents and purposes, it being the true intent and meaning of the parties hereto that a strict observance of the time hereinbefore appointed for the completion of the said purchase, shall be deemed as of the essence of the said contract, without reference or appeal to any Court of Law or Equity (10 v).

AND further that if all persons interested in the

(9) See *ante*, No. IV. p. 52, n. (20).

(10) If the agreement for the purchase be entered into by the purchaser upon an understanding that the person intitled to the reversion will also dispose of his interest, there may be added a clause enabling the purchaser to relinquish the contract, if the reversioner refuse to concur, in which case say,

“ PROVIDED nevertheless that in case the person or persons who for the time being shall be intitled to the immediate reversion of the said premises, expectant upon the decease of the said (*vendor*), shall not, within the space of three calendar months from the date hereof, execute a valid assurance of the said reversion to him the said (*purchaser*), as for a clear estate in fee simple, upon being tendered the sum of £ for the purchase thereof, the said (*purchaser*) shall be at liberty to relinquish the said purchase on giving to the said (*vendor*) notice in writing of his desire so to do, and doing all necessary acts to reassure the said premises unto the said (*vendor*) free from all intermediate incumbrances.”

said premises, or intitled to any legal or equitable estate therein, shall not join in the said conveyance, or if the said (*vendor*) shall become a bankrupt (11), or derive his title under a will not proved per testes, and the heir at law of the devisor shall refuse to join in the conveyance (12), then and in either of the said cases this present contract shall, at the option of the said (*purchaser*), be absolutely void, unless any such defect shall extend to a very inconsiderable part only of the premises, or to an outgoing not exceeding £ per annum, in which case a reasonable abatement shall be made by the said (*vendor*) in respect thereof. And it is hereby agreed that in case the said contract shall be abandoned for defect of title, all reasonable costs and expenses paid or sustained by the said (*purchaser*) in investigating the said title, or in insuring the said premises against loss by fire, but not in insuring the life of the said (*vendor*) (13), shall be borne and paid by the said (*vendor*) (14 v).

PURCHASES.

AGREEMENTS.

Estate for life.

(11) See *ante*, No. I. p. 10, n. (21).

(12) See *ibid*, p. 11, n. (22).

(13) As any insurance which the purchaser may think proper to effect on the vendor's life is a voluntary act and solely for his own security, without being in any degree beneficial to the vendor, it does not appear to be reasonable that it should be made a burthen upon the vendor in the event of the contract going off. But with respect to the investigation of the title, and insurance of the premises against loss by fire, the first is a sort of necessary obligation imposed upon the purchaser, and should the purchase be relinquished for defect of title, will be beneficial to the vendor, by enabling him to guard against or remove the objections on a future sale, and the benefit of the insurance will in such case wholly devolve upon him.

Expense of insuring vendor's life should be borne by the purchaser.

PURCHASES.

AGREEMENTS.

Estate for life.

Intervening accidents not to affect the contract.

If vendor die before purchase completed, articles to be void.

AND (*errors in description shall not vacate the contract*). See *ante*, p. 32.

AND further that any loss or damage which may happen to the said premises by fire, storm, or tempest (15 *v*), at any time between the date hereof and the completion of the said purchase, shall not in any wise vacate or affect the present contract.

PROVIDED ALWAYS that in case the said (*vendor*) shall happen to depart this life at any time between the execution of this agreement and the completion of the said contract, these articles shall be void to all intents and purposes, and the said (*purchaser*) shall not be called upon or be considered liable to pay the purchase money or any part thereof unto the representatives of the said

Immediate possession.

Leasehold for lives.

(14) If the purchaser is anxious to be let into immediate possession, See *ante*, No. II. p. 32, n. (23).

(15) If the premises are holden for lives, and are renewable on the death of any nominee, say,

“Or any decrease which may take place in the value thereof by reason of the decease of any person or persons during the continuance or subsistence of whose lives the said premises are holden, at any time between the date hereof and the completion of the said purchase, shall not in any wise vacate or affect the present contract, but the said (*vendor*) shall in such case, at his own expense, renew the said lease, and add some other life or lives in the room of the person or persons so dying, between the age of years and years, to be named or approved of by the said (*purchaser*), and in default of such renewal, allow unto the said (*purchaser*) out of the said purchase money, the sum of £ for every person who shall so die, for or towards a renewal thereof, to be obtained by the said (*purchaser*).”

(*vendor*), any rule of law or equity in any wise notwithstanding (16).

PURCHASES.

AGREEMENTS.

*Estate for life.*Death of vendor
should be pro-
vided against.

(16) The object of the express provisions in agreements is either to prevent the legal consequences which would follow without such express provisions, or to prevent doubts arising as to what the legal consequences for want of them would be. In an agreement for the purchase of an estate holden for the life only of the vendor, it is difficult to say what provision should, as on the part of both parties, be inserted as to the contract being void on his death between the inception and the completion of the contract, as the law does not appear to be settled as to whether without such a provision the purchaser would be bound to complete his purchase or not. It has been determined in such an event by Lord Keeper Wright, that where the estate was holden during the lives of three persons, and one of them died, the purchaser was not on that account at liberty to rescind the contract. See *Wright v. Nutt*, 1 P. Wms. 62: but his Lordship observed that had all the lives dropped it might have been different, for then the estate being gone, there would be nothing which could be conveyed to the purchaser in return for his money; but yet as the principle upon which the Courts of Equity proceed in compelling a specific performance is the same in this as in other cases, namely, that the subject of the contract from the time of the agreement is no longer the vendor's, but the purchaser's, in like manner as at law it would be had a conveyance been actually executed, it is difficult to say why a specific performance should not be decreed in all, as well as in some cases only, for although there may, by the happening of intervening contingencies, be nothing for the one to give or the other to receive, yet the rights of the respective parties having been previously fixed, it should seem that they ought not to be disturbed because an act of ceremony only has not been performed, and as one must lose all, what equity is there that it should fall on the vendor more than on the purchaser? But until the question is formally determined one way or the other, the interests of the vendor and purchaser seem to vary, and on the part of purchaser the better mode would be to make the death of the cestui que vie to be an avoidance of the contract, and on the part of

PURCHASES.

AGREEMENTS.

Estate for life.

AND (*sum of £ by way of penalty, or of liquidated damages payable by either party on non-performance*). See *ante*, p. 37.

IN WITNESS, (17 v), &c.

Contract by
agent.

the vendor to make the time of perfecting the conveyance the essence of the contract, leaving the rest open to chance.

(17) If the articles be entered into by an agent on behalf of either the vendor or purchaser, See *ante*, No. II. p. 37, n. (31).

PURCHASES.

AGREEMENTS.

Reversion.

No. VII.

*An Agreement for the Purchase of a Reversion in
a Freehold Estate.*

ARTICLES OF AGREEMENT entered into this
day of BETWEEN (*the vendor*) of, &c.
for himself (1 v), his heirs (2), executors and ad-
ministrators (3) of the one part, and (*the purchaser*)
of, &c. for himself, his heirs, executors, admi-
nistrators, and assigns of the other part, as follow,
that is to say,

The said (*vendor*) doth hereby agree to sell and the said (*purchaser*) doth agree to purchase, ALL that the remainder or reversion of him the said (*vendor*) expectant upon, and to take effect in possession immediately after the decease, or other sooner determination of the estate for life, of (*the tenant for life*) of, &c. of and in ALL, &c. free from all incumbrances, at or for the price (4) or

Agreement for
purchase.

(1) If the contract be entered into by an agent for either party, see *ante*, No. II. p. 19, n. (1). Purchase, &c.
by an agent.

(2) See *ante*, No. I. p. 2, n. (2).

(3) See *ibid.* p. 3, n. (3).

(4) In the sale of a reversion, (and more particularly when by the heir at law) it is material that the consideration bear some reasonable proportion to the actual value of the interest disposed of, as the contract will otherwise be in danger of being On purchase of
reversion consi-
deration should
be adequate.

PURCHASES.**AGREEMENTS.****Reversion.**

Vendor to furnish abstract in a given time.

And on receipt of purchase money to execute conveyance.

sum of £ (5 v), to be paid at the time and in the manner hereinafter mentioned.

AND the said (*vendor*) doth promise and agree to deliver unto the said (*purchaser*) within one calendar month from the date hereof a full and satisfactory abstract (6 v) of the title (7) of him the said (*vendor*) to the said premises.

AND also on or before the day of upon receiving from the said (*purchaser*) the said sum of £ (8 v) to execute proper convey-

set aside by the interference of a Court of Equity. See *Wiseman v. Beake*, 2 Vern. 121. *Twisleton v. Griffith*, 1 P. Wms. 310. *Cole v. Gibbons*, 3 ib. 290. *Sir J. Barnardiston v. Lingood*, 2 Atk. 133. *Moth v. Atwood*, 5 Ves. 845. *Morse v. Royal*, 12 ib. 371. *Peacock v. Evans*, 16 ib. 517. *Gowland v. De Faria*, 17 ib. 24. which is contrary to the practice of the courts in other cases, see *Bullock v. Sadler*, Amb. 764. *Coles v. Trecothick*, 9 Ves. 246. *Burrows v. Lock*, 10 ib. 471. and *ante*, p. 22, n. (5).

Consideration a transfer of stock.

(5) If the consideration be a transfer of money in the funds, see *ante*, No. II. p. 21, n. (5).

An annuity.

If it be an annuity payable to the vendor during his life, see *ibid*.

Purchaser to take subject to defects.

(6) If the purchaser is to take subject to all casual defects of title, see *ante*, No. II. p. 24, n. (7).

Title must be deduced from time of creation of the reversion.

(7) This title must be deduced from the time of the creation of the reversionary interest, at however remote a period that may have been, for until the determination of the prior or particular estate, the possession of any wrongful owner would not be adverse to the reversioner's title, and consequently the statute of limitations will not begin to run until the expiration of that period, and where the reversion is expectant upon a term of years the possession of the termor is in many cases deemed the possession of the reversioner, and hence such possession, however long it may have continued, if not adverse to the title of the rightful owner, is no bar to him.

Transfer of stock.

(8) If the consideration be a transfer of money in the funds, see *ante*, No. II. p. 24, n. (8).

ances and assurances of such remainder or reversion, to take effect in possession immediately upon the decease or other sooner determination of the estate for life of the said (*tenant for life*) unto the said (*purchaser*), his heirs and assigns, or as he or they shall direct, free from all incumbrances.

AND it is hereby agreed that all such conveyances and assurances of the said remainder or reversion, shall contain all usual and other proper covenants for the title and quiet enjoyment of the said premises, after the decease or other determination of the estate of the said (*tenant for life*) and further assurance, and shall be prepared by and at the expense (9) of the said (*purchaser*).

AND the said (*purchaser*) doth hereby promise and agree upon the execution of such conveyances and assurances as aforesaid, to pay unto the said (*vendor*) the said purchase money (10 v) or sum of £ in lawful current money of Great Britain, or notes of the Governor and Company of the Bank of England (11 v).

PURCHASES.

AGREEMENTS.

Reversion.

Conveyances to be at purchaser's expense.

Purchaser on execution of conveyance to pay purchase money.

If it be an annuity payable to the vendor during his life, see *ibid.* n. (9). Consideration an annuity.

(9) See *ante*, No. I. p. 6, n. (11).

(10) If part of the purchase money is to be paid down upon signing the agreement, see *ante*, No. II. p. 28, n. (14). Part of money now paid.

(11) If the purchaser is to pay an additional sum in the event of the tenant for life dying before the completion of the purchase, add, Further sum to be paid in case of death of tenant for life.

“ PROVIDED always and it is hereby further agreed that in case the said (*tenant for life*) shall on the day of have departed this life, then the said (*purchaser*) shall pay unto the said (*vendor*) the further sum of £ in addition to the said sum of £ for the purchase of the said premises.”

PURCHASES.

AGREEMENTS.

Reversion.

If conveyance
not perfected
by day ap-
pointed, articles
to be void.

AND it is hereby agreed that if the said conveyances and assurances shall not be perfected for execution on the said day of then the contract hereby entered into for the said purchase shall be wholly void (12) to every intent and purpose, it being the express agreement and true intent and meaning of the parties hereto that a strict observance of the time hereinbefore appointed for the completion of the said purchase, shall be deemed as of the essence of the said contract without reference or appeal to any court of law or equity.

AND (*errors in description not to vacate the contract*). See *ante*, p. 32.

Intervening ac-
cidents not to
affect the con-
tract.

AND further, that any loss or damage which may happen to the said premises by fire, storm, or tempest (13 v), or any increase in value which may accrue thereto by reason of the decease of the said (*tenant for life*) (14 v), at any time between the date hereof and the completion of the said

If money not
paid on day
appointed,
vendor may re-
scind the con-
tract.

(12) The usual stipulation, that if the contract be not completed on the day appointed, the purchaser shall pay interest for the purchase money, should not be inserted, as if it be not paid on the day the vendor may be off his bargain, for per Loughborough, Ch., "no man would sell a reversion who was not distressed for money, and it is ridiculous to talk of making him a compensation by giving him interest on the purchase money during the delay." *Newman v. Rogers*, 4 Brow. Ch. Ca. 391, and see *Spurrier v. Handcock*, 4 Vcs. 667.

Consideration
an annuity.

(13) If the consideration be an annuity payable to the vendor during his life, see *ante*, No. II. p. 34, n. (25).

Further sum
payable on
death of tenant
for life.

(14) If the purchaser is to pay a further sum in the event of the tenant for life dying before the purchase is completed, see *ante*, p. 75, n. (11), these words should be omitted.

purchase, shall not in anywise vacate or affect the present contract.

AND (*sum of £ by way of penalty, or liquidated damages, to be paid by either party on non-performance of the agreement*). See *ante*, p. 37.

IN WITNESS (15 v), &c.

PURCHASES.

AGREEMENTS.

Reversion.

(15) If the contract be entered into by an agent for the vendor or purchaser, see *ante*, No. II. p. 37, n. (31).

Purchase, &c.
by an agent.

PURCHASES.

AGREEMENTS.

Advowson.

No. VIII.

An Agreement for the purchase of an Advowson.

ARTICLES OF AGREEMENT entered into this
 day of in the year of our Lord
 BETWEEN (*the vendor*) of in the county
 of for himself (1 v) his heirs, executors,
 and administrators (2), of the one part, and (*the
 purchaser*) (3) of in the county of
 for himself, his heirs, executors, administrators,
 and assigns, of the other part, as follow, (that is
 to say:)

Agreement for
 purchase.

The said (*vendor*) doth hereby agree to sell,
 and the said (*purchaser*) doth agree to purchase,
 ALL that advowson or perpetual right of patronage
 and presentation, donation, nomination, or col-
 lation, of, in, and to the rectory, vicarage or
 parish church of, &c. and also all glebe lands, &c.

Purchase, &c.
 by agent.

(1) If the contract be entered into by an agent on behalf of
 either party, see *ante*, No. II. p. 19, n. (1).

(2) See *ante*, No. I. p. 3, n. (3).

Purchaser must
 be a protestant.

(3) By the 11 Geo. II. c. 17, it is required that every con-
 tract for the sale of an advowson or next avoidance of a church,
 by a papist or person professing the Roman Catholic religion,
 shall be made with a protestant purchaser, or for the benefit of
 protestants, and for a full consideration.

(*if any appurtenant to the advowson*), with all and all manner of tithes, tenths, fruits, dues, profits, emoluments and appurtenances to the said advowson lands and premises belonging, free from all incumbrances, at or for the price or sum of £ to be paid at the time and in the manner hereinafter mentioned.

PURCHASES.

AGREEMENTS.

Advowson.

AND the said (*vendor*) doth promise and agree to deliver unto the said (*purchaser*) within one calendar month from the date hereof, a full and satisfactory abstract of the title of him the said (*vendor*) to the said advowson.

Vendor to furnish abstract of title in a given time.

AND also on or before the day of now next ensuing, upon receiving from the said (*purchaser*) the said sum of £ to execute proper conveyances and assurances of the said advowson, right of presentation, and premises unto the said (*purchaser*), his heirs and assigns, or as he or they shall direct, free from all incumbrances.

On payment of purchase money to execute a conveyance.

AND it is hereby agreed that all persons in anywise interested in the said advowson, or intitled to the purchase money thereof, shall, if required, join in the said assurances according to their respective estates and interests.

All persons interested to join.

AND it is further agreed that (*conveyance to contain proper covenants and be at purchaser's expense*). See *ante*, No. II. p. 26.

AND the said (*purchaser*) doth hereby promise and agree, upon the execution of such conveyances and assurances, as aforesaid, to pay unto the said (*vendor*) the said purchase money or sum of £

Purchaser on execution of conveyance to pay purchase money.

PURCHASES. in lawful current money of Great Britain, or notes
 of the Governor and Company of the Bank of
 England.

AGREEMENTS.

Advowson.

AND (*if purchase not completed on day appointed, purchaser to pay interest for the purchase money*)
 See *ante*, No. II. p. 30.

AND further (*if title defective, articles to be void*).
 See *ante*, No. II. p. 31.

Events between
 the commence-
 ment and com-
 pletion of the
 purchase not to
 affect the con-
 tract.

AND it is further agreed, that any increase in
 the value of the said advowson and premises, by
 reason of the decease or resignation of the present
 incumbent (4 *v*), or other vacancy of the said

Additional sum
 to be paid by
 purchaser if
 church become
 vacant in a
 given period.

(4) If it be agreed between the parties that a further sum
 shall be paid by the purchaser for the advowson in case the
 church shall become vacant within a given period, instead of
 the above clause say,

“AND further, that in case the church shall happen to
 become void before the conveyance of the said advowson to
 the said (*purchaser*), and the said (*vendor*) shall present thereto
 such person as shall be nominated for that purpose by the said
 (*purchaser*), and shall do all requisite acts by him to be per-
 formed for procuring such person to be admitted, instituted,
 and inducted to the said church, and he shall be admitted,
 instituted, and inducted thereto accordingly, he the said
 (*purchaser*) shall pay unto the said (*vendor*) in addition to the
 said sum of £ hereby agreed to be given for the purchase
 of the said advowson, the further sum of £ within one
 calendar month next therefrom. Provided nevertheless, that
 in case the person so to be presented, instituted, and inducted
 shall thereafter be removed by reason of any defect in the
 title of the said (*vendor*), and any other person shall be pre-
 sented and instituted to the same, the said (*vendor*) shall
 repay within the said period of one calendar month thereafter
 to the said (*purchaser*) the said sum of £ with interest
 after the rate of 5 per cent. per annum, in the mean time.”

church, or any diminution in the value thereof, by the present incumbent being promoted to a bishoprick (5), and the right of presentation thereby devolving on the crown, between the date hereof, and the completion or relinquishment of the said purchase for defect of title on the said day of , shall not affect the present contract, nor entitle either of the said parties to any abatement or advancement of price in respect thereof. Provided always that the right of nomination to the said church shall, in case of any such vacancy, (except by reason of such promotion as aforesaid) belong to the said (*purchaser*), and the person who shall be nominated thereto by him shall be duly presented by the said (*vendor*).

PURCHASES.

AGREEMENTS.

Advowson.

(5) If it be the intention of the parties that a sum equivalent to the value of the next presentation shall be returned by the vendor on the event of the present incumbent being created a bishop, and the crown presenting, say,

If incumbent
created a bishop
part of purchase
money to be
returned.

“ AND it is hereby agreed, that if the present incumbent of the said rectory or parish church of , shall at any time hereafter during his incumbency be promoted to the dignity of a bishop, and the right of presentation to the said rectory or parish church thereby devolve upon and be exercised by his Majesty or any of his successors, then and in such case so much of the said purchase money as shall be equal to the value of the next presentation (to be ascertained by three indifferent persons to be appointed in the usual manner) shall be returned by the said (*vendor*) to the said (*purchaser*) together with interest for the same after the rate of £5 per cent. per annum, from the time of the execution of the conveyance of the said advowson, until the time of such promotion of the said incumbent.”

PURCHASES.

AGREEMENTS.

Admission.

Time on de-
cease of in-
cumbent to be
of the essence
of the contract.

PROVIDED nevertheless, that in case of any such vacancy as aforesaid happening in the said church between the date hereof and the time hereinbefore limited for completion of the said purchase, the time so hereinbefore appointed for completion thereof, shall be considered as of the essence of the present contract, and the said title shall be definitively accepted or rejected on or before the said day of , and in default thereof, these articles and every of them shall be thenceforth wholly void, as if the same had not been made, unless no complete abstract of title shall have been delivered by the said (*vendor*) on the day hereinbefore appointed for that purpose, in which case these presents shall remain in force for the space of one calendar month after such abstract shall have been delivered, and no longer.

AND it is hereby lastly agreed that (*title deeds if relating to property of equal or greater value shall be retained by vendor*). See *ante*, No. II. p. 35.

AND (*sum of £ by way of penalty or liquidated damages to be paid by either party on non-performance of agreement*). See *ante*, No. II. p. 37.

IN WITNESS (6 v), &c.

Purchase, &c.
by an agent.

(6) If the contract be entered into by an agent for either party, see *ante*, No. II. p. 37, n. (31).

PURCHASES.

AGREEMENTS.

Advowson.

SUGGESTIONS

TO THE

SOLICITORS.

IN correction of the observations made in the introductory essay, so far as they may be considered as generally applicable, it is to be remarked that in respect of an advowson, if it be in gross, i. e. not appendant to a manor, a title for any reasonable length of time may be required, although it exceed sixty years, for as to these the statutes of limitations have no operation, they having been repealed in respect to advowsons by the 1 Mary, stat. 2, cap. 5, sect. 4, and hence the title must, if required, be deduced, however ancient it may be, from the time of the original grant. This doctrine relates, however, to such advowsons only as are in gross, as those which are appendant or appurtenant to a manor, follow the title of the manor to which they belong.

Original grant
of an advowson
must be pro-
duced.

So also where the subject is rectorial tithes, or indeed any other property to which the title originated in a grant by the crown, the deed of grant must be abstracted, because in these cases if any remainder, reversion, or annual rent were reserved to the crown, which was not unusual in such grants, they will prove an impediment to the title, for not being barrable by fine or recovery they will, unless the contrary be shown, be presumed to be still subsisting, and therefore be still payable if

So of tithes and
other grants
from the crown.

PURCHASES. a rent, and if a reversion, to be still capable of taking effect on the determination of the particular estate.

AGREEMENTS.

Advowson.

Sale of advowson or next presentation cannot be made during vacancy of the church.

The sale of an advowson, whether it be of the advowson itself, or of the next presentation, cannot be made during the avoidance of the church, (so far as respects the next turn) the first being void by the common law, *Grey v. Heskith*, Amb. 268, and the other by the statutes of simony, *ibid.*

It may not be wholly irrelevant to notice here an observation made by way of precaution by Dr. Watson in his Clerical Law, "That a purchaser of a next turn, whether he design it for a son, kinsman or stranger, should not enter into the contract, when the incumbent of the church is in danger of death; nor declare his intention to the person he intends to present; and that the intended clerk should not be present at the contract," precautions which, under the shade of obscurity which prevails in respect to the precise line of simony in presentation, (see *Fearn*, P. Wks. 408), appear to be worthy attention.

PURCHASES.

AGREEMENTS.

Next Presentation.

No. IX.

An Agreement for the Purchase of the Next Presentation to a Living.

Variation where it is for more turns than one, if happening during a life, or term of years.

ARTICLES OF AGREEMENT entered into this
day of in the year BETWEEN
(the vendor) (1 v) of, &c. for himself, his heirs (2),
executors, and administrators of the one part, and
(the purchaser) of, &c. for himself, his heirs, exe-
cutors, administrators, and assigns, of the other
part, as follow, (that is to say :)

The said (vendor) doth hereby agree to sell,
and the said (purchaser) doth agree to purchase,
the first or next turn, avoidance, or right of dona-
tion, nomination, presentation, and free disposition
of, and to the advowson, rectory, parsonage, or
parish church of , in the county of ,

Agreement for purchase.

(1) If the contract be entered into by an agent on behalf of either party, see ante, No. II. p. 19, n. (1).

Contract by agent.

(2) As the next or future avoidance of a church is only a chattel interest, an agreement for the sale or purchase of it will be binding on the personal representatives of the parties although not expressly named.

The next avoidance of a church is a chattel interest.

PURCHASES. whenever (3 r) the same shall, first and next after
 _____ the date hereof, happen to become void by the
AGREEMENTS. death, resignation, or cession of *A B* the present
 _____ incumbent thereof, or by any other ways and means
Next Presentation. whatsoever.

Vendor to
furnish abstract
title in a given
time.

AND the said (*vendor*) doth promise and agree to deliver unto the said (*purchaser*) within one calendar month from the date hereof, a full and satisfactory abstract of the title of him the said (*vendor*) to the advowson or perpetual right of presentation to the said church.

And upon receipt of purchase money to execute conveyance.

And also on or before the day of
now next ensuing, upon receiving from the said (*purchaser*) the said purchase money or sum of £ , to execute a proper grant, conveyance, and assurance of the said first (4 v) or next turn or right of presentation to the said church, unto the said (*purchaser*) his executors, administrators, or assigns, or as he or they shall direct.

More turns
than one.

(3) If the contract be for the purchase of the right of presentation for a limited time, say,

“The right of donation, nomination, or presentation, and free disposition of and to the advowson, rectory, parsonage, or parish church of , in the county of , when and so often as the said church shall become void by the death, resignation, or deprivation of the present or any future incumbent thereof, in the lifetime of the said (*vendor*), or, during the term of years from the date hereof.”

More turns
than one.

(4) If the contract be for the purchase of more turns than one, say,

“Of the said right of presentation to the said church, so often as the same shall become vacant during the time or period aforesaid.”

AND it is hereby agreed, that all persons in any wise interested in the said advowson or perpetual right of presentation shall, if required, join in assuring and confirming the said first (5 *v*) or next turn or right of presentation to the said (*purchaser*).

PURCHASES.

AGREEMENTS.

Next Presentation.

All persons interested to join.

AND it is hereby agreed that the said grant or other conveyance or assurance of the said first (6 *v*) or next turn, or right of presentation, shall contain all usual and other proper covenants for the title, quiet enjoyment, and further assurance thereof, and be accompanied by a bond or obligation in writing under the hand and seal of the said (*vendor*), in a sufficient penalty for the due performance of the said covenants, which said grant, conveyance, and assurance, and bond, shall be prepared by and at the expense of the said (*purchaser*).

Conveyance to contain usual covenants and be at purchaser's expense.

AND the said (*purchaser*) doth hereby promise and agree, upon the execution of such grant, conveyance, and assurance, and the delivery of such bond as aforesaid, to pay unto the said (*vendor*) the said purchase money or sum of £ , in lawful current money of Great Britain, or notes of the Governor and Company of the Bank of England.

Purchaser on execution of conveyance to pay purchase money.

AND it is hereby agreed that (*if purchase not completed on day appointed, interest to be paid for purchase money*). See *ante*, No. II. p. 30.

(5) See *ante*, n. (4).

(6) See *ante*, n. (4).

PURCHASES.

AGREEMENTS.

Next Presentation.

If title defective, contract to be void.

AND further, that if a clear and marketable title cannot be deduced to the said advowson or perpetual right of presentation, or the grant, conveyance and assurance of the said first or next turn or right of presentation to the said church, shall not be perfected by the said day of , or within two calendar months next thereafter, or if all persons interested in the said advowson shall not join in the conveyance, or if the said *A B*, the present incumbent of the said rectory or parish church of , shall at any time between the date hereof and the completion of the said purchase, become a bishop, and the said next turn or right of presentation thereto shall thereby devolve upon and be exercised by the Crown, then, and in either of the said cases, this present contract shall, at the option of the said (*purchaser*), be absolutely void. And it is hereby agreed, that in case the said contract shall be abandoned for defect of title, all reasonable costs and expenses paid or sustained by the said (*purchaser*) in investigating the said title, shall be borne and paid by the said (*vendor*).

If incumbent created a bishop, the purchaser to have the next subsequent avoidance.

AND it is further agreed, that if at any time after the completion of the said purchase the present incumbent of the said rectory or parish church of , shall be created or promoted to the dignity of a bishop, and the right of presentation to the said rectory or parish church of , shall devolve upon and be exercised by his Majesty or any of his successors, then and in such case the said (*purchaser*) shall have and enjoy the first or

next turn (7) or right of presentation to the said rectory or parish church of _____, which shall happen after the death, resignation, or cession of the person so to be presented by virtue of his Majesty's royal prerogative as aforesaid, or in any other way or manner whatsoever.

PURCHASES.

AGREEMENTS.

Next Presentation.

AND (sum of £ _____ by way of penalty or liquidated damages, to be paid by either party on non-performance of the agreement). See ante, No. II. p. 37.

IN WITNESS (8v), &c.

(7) If an incumbent of a living be made a bishop, the right of presentation devolves on the Crown, see *Woodley v. Bishop of Exeter*, Winch. 94, Cro. Jac. 691, S. C. and the grantee of the next presentation is in such case, according to some authorities, wholly defeated. But see *Dyer*, 228, *b. Calland v. Howard*, 2 Hen. Blac. 324, affirmed, K. B. 6 Term Rep. 439, and *Dom. Proc. 8 Brown P. C. 71*, from which cases it should seem that the grantee will, on the exercise of the right of presentation by the Crown, be intitled to the next subsequent turn.

Next presentation devolves on the king if incumbent be made a bishop.

In donative advowsons, however, such promotion does not deprive the patron of his right, and in such case therefore this stipulation need not be inserted.

Unless the advowson be donative.

(8) If the contract be entered into by an agent on behalf of the vendor or purchaser, see No. II. p. 37, n. (31).

Purchase, &c. by an agent.

PURCHASES.

AGREEMENTS.

Tithes.

No. X.

*An Agreement for the Purchase of Rectorial or Great Tithes.**Variations where the purchase of Small or Vicarial Tithes.*

ARTICLES OF AGREEMENT, entered into this
 day of in the year , Between
 (*the vendor*), for himself, (1 *v*), his heirs, executors,
 and administrators, of the one part, and (*the pur-*
chaser), for himself, his heirs, executors, ad-
 ministrators, and assigns, of the other part, as fol-
 low, (that is to say :)

Agreement for
 purchase.

THE said (*vendor*) doth hereby agree to sell,
 and the said (*purchaser*) doth agree to purchase,
 at or for the price or sum of £ (2 *v*), to be
 paid at the time and in the manner hereinafter
 mentioned, ALL the tithes (3 *v*) or tenths of corn,
 grain, and hay, and other great and rectorial

Purchase, &c.
 by an agent.

Consideration
 an annuity.

Small tithes.

(1) If the contract be entered into by an agent on behalf of
 either party, See *ante*, No. II. p. 19, n. (1).

(2) If the consideration be an annuity to be paid to the ven-
 dor during his life, See *ante*, No. II. p. 21, n. (5).

(3) If the purchase be of the small tithes only, say,

“ ALL the tithes of wool, lamb, fruits of trees, hemp and
 flax, eggs, milk, honey, and all other tithes, tenths, dues,

tithes and dues, arising, renewing, and increasing
upon or within the parish or township of
in the county of , and the fields, lands,
grounds, liberties, precincts, and territories there-
of, belonging to the rectory impropriate of ;
together with all oblations, obventions, pensions,
fees, dues, profits, emoluments, rights, members,
and appurtenances thereunto belonging or in any
wise appertaining.

PURCHASES.
AGREEMENTS.
Tithes.

AND the said (*vendor*) doth promise and agree
to deliver unto the said (*purchaser*) within one
calendar month from the date hereof, a full and
satisfactory abstract of the title of him the said
(*vendor*) to the said tithes.

Vendor to fur-
nish abstract in
a given time.

AND also on or before the day of now
next ensuing, upon receiving (4*v*) from the said
(*purchaser*) the said sum of £ , to execute a
proper conveyance and assurance of the said tithes,
unto the said (*purchaser*) his heirs, and assigns, or
as he or they shall direct.

And on pay-
ment of pur-
chase money
execute a con-
veyance.

And it is hereby agreed that all persons in any
wise interested in or intitled to the said tithes shall
join in the said conveyance according to their re-
spective estates and interests.

All persons in-
terested to join.

And it is hereby agreed that the said conveyance

Conveyance to
contain usual
covenants and
be at pur-
chaser's expense.

and duties, which are paid and usually reckoned as small or
vicarial tithes, in, upon, or within, the town, fields, gardens,
or precincts of , in the parish of ."

(4) If the consideration be an annuity during the life of the
vendor, See *ante*, No. II. p. 24, n. (9).

Consideration
an annuity.

PURCHASES. shall contain all usual and other proper covenants

AGREEMENTS. for the title, quiet enjoyment, and further as-

Tithes. surance of the said tithes, and shall be prepared

 by and at the expense of the said (*purchaser*).

Purchaser on
 execution of
 conveyance to
 pay purchase
 money.

And the said (*purchaser*) doth hereby promise
 and agree, upon the execution of such conveyance
 and assurance, to pay unto the said (*vendor*) the
 said purchase money, or sum of £ in lawful
 current money of Great Britain, or in notes of the
 Governor and Company of the Bank of England.

Purchaser to be
 intitled to
 tithes from
 day of

AND it is hereby agreed that the said (*pur-
 chaser*) shall, on payment of the said purchase
 money, be intitled to the said tithes and premises
 from the day of

Purchase not
 completed on
 day appointed,
 interest to be
 paid for pur-
 chase money.

AND further, that if the said conveyance and
 assurance cannot be perfected for execution on
 the said day of , the said (*purchaser*)
 shall pay interest for the said purchase money
 after the rate of £5 per cent. per annum, from
 the time from which he shall be intitled to the said
 tithes, until the execution of the said conveyance
 and the payment of the said purchase money.

Errors in de-
 scription not to
 vacate the con-
 tract.

AND further, that any trifling error or omission
 which may happen to have been made with respect
 to the quantity or other description of the lands
 out of or in respect of which the said tithes issue
 or are paid or payable, shall not vacate the pre-
 sent contract, but a reasonable abatement shall be
 made or equivalent given as the case may re-
 quire, the amount of which shall, in case of dif-
 ference between the parties, be referred to the ar-

bitration of three surveyors to be chosen in the usual manner (5 v).

And lastly, it is hereby agreed that the said (*vendor*) shall not grant or agree to grant, during the subsistence of the present contract, any leases of the said tithes, or of any part thereof, without the consent in writing of the said (*purchaser*).

AND (*sum of £* *by way of penalty or of liquidated damages to be paid by either party on non-performance of the agreement*). See *ante*, No. II. p. 37.

IN WITNESS (6 v), &c.

PURCHASES.

AGREEMENTS.

Tithes.

Vendor not to grant leases.

(5) If the consideration be an annuity payable to the vendor during his life, See *ante*, No. II. p. 84. n. (25).

Consideration an annuity.

(6) If the contract be entered into by an agent on behalf of either party, See *ante*, No. II. p. 37, n. (31).

Contract by agent.

PURCHASES.

AGREEMENTS.

Rent Charge.

No. XI.

*An Agreement for the Purchase of a Rent Charge in Fee.**Variations where it is a Rent Charge for Life.**Where it is a Rent reserved upon a Lease for Years.*

Parties.

ARTICLES OF AGREEMENT (1) entered into this day of in the year , Between (*the vendor*) (2 *v*) of, &c. for himself, his executors, and administrators (3), of the one part, and (*the purchaser*) of, &c. for himself, his executors, administrators, and assigns, of the other part, as follow : (that is to say)

Agreement for purchase.

THE said (*vendor*) doth hereby agree to sell, and the said (*purchaser*) doth agree to purchase, at the price or sum of £ , to be paid at the time and in the manner hereinafter mentioned, ALL that perpetual yearly rent charge (4 *v*), or

Purchase, &c. by agent.

(1) See *ante*, No. I. p. 1, n. (1).(2) If the contract be entered into by an agent for either party, See *ante*, No. II. p. 19. n. (1).(3) See *ante*, No. I. p. 3, n. (3).

Rent charge for life.

(4) If the rent charge be payable to the vendor during his life only, say,

“ ALL that yearly rent charge or annual sum of £ , issuing out of, and chargeable upon certain messuages, lands,

annual sum of £ , issuing and payable out of, and charged and chargeable upon certain messuages, lands, tenements, and hereditaments, situated at , in the county of , under or by virtue of a certain indenture of grant, bearing date the day of , and made between, &c. together with the rights, members, and appurtenances to the same belonging.

PURCHASES.
AGREEMENTS.
Rent Charge.

AND the said (*vendor*) doth hereby promise and agree to deliver unto the said (*purchaser*), within one calendar month from the date hereof, a full and satisfactory abstract of the title of him the said (*vendor*) to the said rent charge (5 *v*).

Vendor to furnish abstract in a given time.

AND also on or before the day of now next ensuing, upon receiving from the said (*purchaser*) the said sum of £ , to execute

And on payment of purchase money to execute conveyance.

tenements, and hereditaments, situated at , in the county of , and payable to the said (*vendor*), for and during the term of his natural life, under or by virtue of a certain indenture of settlement, bearing date the day of , and made or expressed to be made between, &c.”

If the subject of the rent charge be a rent reserved upon a lease for years, say,

Rent reserved upon a lease for years.

“ ALL that yearly rent or annual sum of £ , reserved and made payable to the said (*vendor*), his heirs, and assigns, for the term of years, in and by a certain indenture of lease, bearing date the day of , and made or expressed to be made between, &c.”

(5) If the rent charge be payable to the vendor during his life, add a clause, that the vendor will appear at an insurance office if required to do so by the purchaser. The form of this clause will be similar to that given, *ante*, No. VI. p. 66.

Rent charge for life.

PURCHASES. a proper conveyance and assurance of the said

AGREEMENTS. rent charge (6 *v*) unto the said (*purchaser*), his

Rent Charge. heirs, or assigns, or as he or they shall direct, free

from all incumbrances.

Conveyance to
be at purchaser's
expense.

AND it is hereby agreed that the said conveyance and assurance shall contain all usual and other proper covenants for the title, quiet enjoyment, and further assurance of the said rent charge, and shall be prepared by and at the expense of the said (*purchaser*).

Purchaser on
execution of
conveyance to
pay purchase
money.

AND the said (*purchaser*) doth hereby promise and agree, upon the execution of such conveyance and assurance as aforesaid, to pay unto the said (*vendor*) the said purchase money or sum of £ , in lawful current money of Great Britain, or in notes of the Governor and Company of the Bank of England.

Purchaser to
have rent charge
from last quarter
day.

AND it is hereby agreed that the said (*purchaser*) shall, on payment of the said purchase money, be intitled to the said rent charge from the
day of last past.

If conveyance
not perfected on
day appointed,
articles to be
void.

AND further, that if the said conveyance and assurance shall not be perfected by the said
day of , then the contract hereby entered into for the sale of the said rent charge shall be wholly void to all intents and purposes, it being the

Lease for years.

(6) If the subject of the purchase be a rent reserved upon a lease for years, say,

“ Unto the said (*purchaser*) his executors, administrators, and assigns, for the residue now to come and unexpired of the said term of years.”

express agreement, and true intent and meaning of the parties hereunto, that a strict observance of the time hereby appointed for the completion of the said purchase shall be deemed as of the essence of the said contract, without reference or appeal to any court of law or equity.

AND further, that any trifling error or omission which may appear to have been made with respect to the amount of the said rent charge (7 v), or to the quantity or other description of the premises out of which the said rent charge arises or issues, shall not vacate or affect the present contract, but a reasonable abatement shall be made or equivalent given as the case may require; the amount of which shall, in case of difference between the parties, be referred to the arbitration of three surveyors to be chosen in the usual manner (8 v).

PURCHASES.

AGREEMENTS.

Rent Charge.

Errors in description not to vacate the contract.

(7) If the subject of the purchase be a rent reserved upon a lease for years, add,

“ Or in the duration or continuance of the said yearly rent or annual sum.”

(8) If it be an object with the purchaser that the lands out of which the rent charge issues, should be situated in a particular county, say,

If lands not situated in particular county, articles to be void.

“ AND further, that in case the lands and hereditaments out of which the said rent charge issues shall not be situated within the county of , then the said (*purchaser*) shall be at liberty, on giving one calendar month's notice in writing to the said (*vendor*), to vacate this present contract *in toto*, any thing hereinbefore contained to the contrary thereof, in any wise notwithstanding.”

If the subject of the purchase be a rent charge payable during the life of the vendor, say,

Rent charge for life.

PURCHASES.**AGREEMENTS.****Rent Charge.**

AND (*sum of £* *by way of penalty or of liquidated damages, payable by either party on non-performance of the agreement*). See *ante*, No. II. p. 37.

IN WITNESS (9 v), &c.

“PROVIDED always, that if the said (*vendor*) shall happen to depart this life at any time between the date hereof and the day hereinbefore appointed for the completion of the said contract, then and in such case the said contract shall cease and be void to all intents and purposes whatsoever.”

Purchase, &c.
by an agent.

(9) If the contract be entered into by an agent for either party, See *ante*, No. II. p. 37, n. (31).

PURCHASES.

*Conditions
of sale.*

No. XII.

Conditions of Sale (1) by Auction.

1st. **T**HAT the highest bidder shall be the purchaser, and if any doubt arise as to who was the highest bidder, the lot shall be put up again at the bidding next preceding that in dispute.

2dly. That no person shall advance less than £ at each bidding.

3dly. That no person shall retract (2) his or her bidding after it has been taken by the auctioneer.

(1) As the conditions annexed to printed particulars of estates sold by auction, constitute an efficient agreement between the vendor and the best bidder or purchaser as to the terms of the purchase, and as they are generally very defective in respect of stipulations calculated to prevent disputes arising in the subsequent stages of the purchase, and cannot be amended by any verbal declaration of the auctioneer at the time of the sale, *Gunnis v. Erhart*, 1 H. Black. 289, and see *post*, p. 104, n. (13); and as conditions of sale, like all other conditions, must be made consistent with the nature of the property and the circumstances of the title, vide *Co. Litt.* 206, *b.* *Cro. Jac.* 596, 2 *Vern.* 233.; they ought not to be left to the sole judgment of the auctioneer, as they too frequently are, but should always be prepared by the solicitor or his counsel. I have therefore thought it proper to insert, for his guidance, a set of conditions of sale applicable to various species of property.

Conditions of
sale binding on
the parties.

(2) As persons bidding at an auction may retract their biddings at any time before the hammer is down, the assent of

Bidders may
retract before
fall of hammer.

PURCHASES.

*Conditions
of sale.*

4thly. That the purchaser shall immediately upon the close of the bidding pay down into the hands of the auctioneer a deposit of £ per cent. in part of the purchase money, and sign an agreement for payment of the remainder on or before the day of upon having a good title.

5thly. That an abstract of the title shall be delivered to the purchaser at the vendor's expense.

6thly. That the purchaser shall have a proper conveyance at his own expense upon payment of the remainder of the purchase money, conformably to the fourth condition, and be intitled to the rents and profits from the day (3) of up to which time all outgoings shall be cleared by the vendor (4 v).

both parties being requisite to complete a contract, *Payne v. Cave*, 3 Durnf. and E. 148.; and as this has generally the effect of depressing the sale, a stipulation negating this privilege, seems proper to be inserted in conditions of public sale.

New style intended, if not otherwise expressed.

(3) It seems better to put the day and month from which the purchaser is to have the profits of the estate, than the quarter day, as Michaelmas or the like, to prevent disputes as to whether the new or old shall be meant; it has however been determined that the new style shall always be intended if the contrary be not expressed. See *Doe dem. Spicer v. Lea*, 11 East, 312.

Vendors trustees.

(4) If the estate be sold under a devise, or deed of trust, for payment of debts, it will be proper to insert the following condition :

“ That the vendors being only trustees, and as such not liable to enter into covenants for the title, the purchaser shall be satisfied with the usual covenant, that they have not incumbered.”

7thly. That in case the purchaser shall not have prepared his conveyance, and delivered the same ingrossed to the vendor's solicitor for execution by the said day of the remainder of his purchase money shall be laid out at the purchaser's expense in Exchequer bills (5 *v*) at the risk of the vendor, and deposited at the banking-house of Messrs. , in the joint names of the vendor and purchaser, to be delivered over to the vendor with all interest accrued thereon, as soon as the conveyance shall be completed.

PURCHASES.

*Conditions
of sale.*

8thly. That the vendor, or an agent for him, shall be allowed to bid (6) once in the course of the sale (7 *v*).

Without this notice to the purchaser, it may be questioned whether he would be obliged to accept the title, where there is no one to enter into the usual covenants, see Sugd. Vend. and Pur. 5 Edit. 397.

Trustees not
liable to cove-
nant for the title.

(5) Or it may be declared,

“ That in case the said purchase shall not be completed by the said day of the vendor shall be intitled to interest on the purchase money, at the rate of £5 per cent. per annum, until the purchase money shall be actually paid.”

Interest to
be paid for
purchase
money.

(6) As many disputes have arisen on sales by auction with respect to the legality of biddings on behalf of the vendor, and as without such biddings, the estate would often be sold at much less than its real value; it seems highly proper to guard against the recurrence of such disputes by inserting in the conditions of sale an express stipulation that the vendor shall be at liberty to bid either “once in the course of the sale,” see Cowp. 397, or until the biddings have arisen to a sum under which he has determined not to part with the estate. See *Bramley v. Alt*, 3 Ves. 620. *Smith v. Clarke*, 12 ib. 477. If the latter mode be preferred, say,

Vendor should
reserve privilege
of bidding.

PURCHASES.

Conditions
of sale.

9thly. That the auction duty (8) shall be paid in equal moieties (9) by the vendor and purchaser.

Estate sold in
lots.

“ That no exception shall be taken on account of any bidding or biddings by or on the part of the vendor under the sum of £ for lot , £ for lot , &c.”

(7) If the estate is sold in lots it may be convenient to introduce the following conditions :

“ That the vendor shall be at liberty to vary or transpose any of the said lots, or to put up, or add any lot or lots which shall not have been sold, to or with any succeeding or other lot or lots, in such manner as he shall think proper, which united or varied or transposed lots, shall be sold subject to the same terms and conditions in all other respects, as if no such union, variation, or transposition had been made.”

“ That if any person become the purchaser of two or more lots, and the title of either of them shall prove to be defective, the purchaser thereof shall not be compellable to accept the purchase with respect to the other lot or lots purchased, but he may abandon the contract altogether.”

Purchaser of
several lots can-
not reject some
on account of
deficiency of
title in the rest.

Without this provision the purchaser of several lots will be obliged to accept of such to which a good title can be made, although there be no title to the rest, unless they are so complicated together as to be of comparatively little value apart, 2 Brow. Ch. Rep. 118. *Drew v. Hanson*, 6 Ves. jun. 675. *M'Queen v. Farquhar*, 11 Ves. jun. 467. whilst the object of a purchaser in buying several lots, is in general for the purpose of having a compact estate.

Auction duty
not payable in
certain cases.

(8) This condition is to be omitted where the sale is made under a decree of the Court of Chancery or Exchequer in England; Court of Great Sessions in Wales, or Court of Exchequer or Session in Scotland.—So where the sale is of the grant of copyhold or customary lands, for lives or years, by the lord of a manor, or of leases for lives or years by other persons; or of coppice woods; or the produce of mines or quarries; so of sales by sheriffs in execution of a judgment; or by assignees of a bankrupt, and sales for redemption of land tax—no auction duty being in these cases payable. See 19 Geo. III. c. 56, 42 ib. c. 116.

10thly. That the vendor (10 v) shall retain such title deeds as concern other estates of greater value, and enter into the usual covenants, to be prepared by his solicitor at his own expense for the production of them to the purchaser, and deliver attested copies thereof, at the expense of the person (11 v) requiring the same (12 v).

PURCHASES.

*Conditions
of sale.*

(9) Although the act of 17 Geo. III, c. 50, s. 8, imposing this duty, makes it payable by the vendor, yet this does not prevent its being otherwise stipulated by agreement, see 7 Ves. 345, and as the purchaser naturally reckons it in his bidding, and it may be recovered back if the title prove to be bad, *Cane v. Baldwin*, 1 Stark. 65, the stipulation carries no objection with it.

Auction duty may be recovered from vendor, if title defective.

(10) If the estate be sold in several lots which are holden under the same title, say,

Estate sold in lots.

“That the purchaser of the largest lot shall have the custody of the title deeds, and enter into the usual covenants for the production and delivering attested copies thereof to the respective purchasers of the other lots, which deed of covenant and also all attested copies are to be prepared by the solicitor of the vendor, at the expense of the person requiring the same, and should all the lots not be sold, the title deeds to remain in the custody of the vendor, who will enter into the usual covenant for the production thereof.”

(11) As the expense of attested copies when to be borne by the purchaser frequently falls very heavily upon small purchases, it may be provided, if such be the wish of the vendors,

Attested copies.

“That such attested copies of title deeds as shall be required by the respective purchasers shall be made and delivered at his or their own expense, unless his or her purchase money shall not amount to £ , in which case attested copies of all such deeds and writings as shall be deemed necessary according to professional usage, shall be made and delivered at the joint expense of the vendor and purchaser.”

(12) If the timber growing upon the estate is to be separately valued, add,

Timber to be separately valued.

PURCHASES.

*Conditions
of sale.*

11thly. That if any mistake (13) be made in the number of acres, or other description of the premises set forth in the above particulars (unless such error be in respect of the nature or quality of the tenure, as leasehold or copyhold for freehold, or the like) such mistake (14) shall not vacate the purchase, but a compensation or equivalent shall be given or taken as the case may require.

“ That all timber growing upon the estate shall be taken by the purchaser at a valuation to be made by two indifferent persons, one to be chosen by the vendor and the other by the purchaser, and in case of difference between them then by a third person, to be by such two persons named; and in which valuation all trees considered to be of the value of 40 shillings shall be deemed timber, of whatever kind they may be.”

This definition by the vendor of what he considers to be timber is necessary, as it will otherwise be deemed such as is so considered by the custom of the place, *Duke of Chandos v. Talbot*, 2 P. Wms. 601, and which the purchaser may possibly be wholly unacquainted with.

Vendor bound
by printed par-
ticulars.

(13) Great care should be taken by the vendor's solicitor that the particulars of the estate are correct, as the vendor will be bound by them as there given, see *Calverley v. Williams*, 1 Ves. jun. 213, *Schneider v. Heath*, 3 Campb. 506, notwithstanding any correction of them which may be mentioned by the auctioneer at the time of the sale. *Jenkinson v. Pepys*, cited 6 Ves. 330. *Higginson v. Clowes*, 15 ib. 521. The verbal declarations of an auctioneer against the printed particulars not being available, *Gunnis v. Erhart*, 1 Hen. Black. 289. *Powell v. Edwards*, 12 East, 6. *Jones v. Edney*, 3 Campb. 285.

“ Errors” mean
unintentional
errors.

(14) This clause is construed to mean unintentional errors and not false descriptions by design, which would notwithstanding vacate the sale. See *Duke of Norfolk v. Worthy*, 1 Campb. 337. *Fenton v. Brown*, 14 Ves. 144. *Wynch v. Winchester*, 1 Ves. and Bea. 377. *Stewart v. Alliston*, 1 Mer. 26.

12thly. That if any purchaser shall fail to comply with the above conditions, his or her deposit money shall be forfeited to the vendor, who shall be at liberty to resell the lot or lots bought by him or her either by public auction or private contract, and the deficiency if any which shall arise on such second sale, together with all expenses attending the same, shall be made good to the vendor by the defaulter at this present sale (15), and be recoverable as for liquidated damages, and it shall not be necessary previously to tender a conveyance to such defaulter.

PURCHASES.

Conditions
of sale.

If the Sale be of Copyholds, add,

That all fines, whether arbitrary or certain, payable on the surrender of the vendor or the admission of the purchaser, shall be paid by the purchaser.

If the Sale be of Leaseholds, add,

That the purchaser shall enter into the usual covenants for indemnifying the vendor (16) from the rent and covenants in the original lease.

(15) Under this condition (if broken) the vendor may resell and recover from the purchaser the deficiency, if any, and the charges of resale, and also retain the surplus, if any, agreeably to the term of the condition, see *ex parte Hunter*, 6 Ves. 94; and this condition is a lien on the estate in the hands of the purchaser in case of his default by reason of bankruptcy or otherwise, *ex parte Lord Seaforth*, 1 Rose, 306.

Condition a lien
on the estate.

(16) It should seem that a purchaser is bound to do this although it may not be required by the conditions of sale. See *Pember v. Mathews*, 1 Brow. Ch. Ca. 52.

Purchaser
bound to in-
demnify.

PURCHASES.

*Conditions
of sale.*

That the purchaser shall not be entitled to require the production of the lessor's title.

That the purchaser of the largest lot shall have an assignment of the lease, he granting to the other purchasers an underlease at a peppercorn rent for the term then to come wanting one day, subject to covenants similar to those contained in the original lease.

That in case any accident shall happen by fire or otherwise to the said premises before the execution of the conveyance, such accident shall not vacate the sale, but the same shall be good and valid in all respects, in like manner as if no accident had happened.

If the Sale be of an Estate for Life.

That in case the vendor shall happen to die before the time appointed for the completion of the contract, the sale shall be void.

If the Sale be of a Lease for Lives, add,

That the death of any of the persons during whose lives the premises are holden, before the execution of the conveyance, shall not vacate or affect the sale of the said premises, but the same shall be good and valid in all respects, in like manner as if no such death had happened.

If the Sale be of a Reversion, add,

That in case any loss or damage shall happen, by fire or otherwise, to the said premises, or any

increase in value shall accrue thereto by the decrease of the tenant for life at any time before the completion of the purchase, the same shall not in anywise vacate or affect the present sale.

PURCHASES.

Conditions
of sale.

If the Sale be of an Advowson, add,

That the purchaser shall not require the production of the original grant of the advowson, but shall be satisfied with a deduction of the title from the year .

That if any vacancy shall happen in the church by the death or resignation of the present incumbent before the completion of the purchase, the right of nomination shall belong to the purchaser.

. As it appears to be determined by the latest decisions, that sales of estates by public auction (although otherwise of goods) are within the statute of frauds, and not binding upon the purchaser, unless the contract be put into writing, and signed by him or his agent, see *Stansfield v. Johnson*, 1 Esp. Ca. 101. *Walker v. Constable*, 2 ib. 659; 1 Bos. and Pul. 306; *S. C. Buckmaster v. Harrop*, 7 Ves. jun. 341; 13 ib. 456; *Coles v. Trecothick*, 9 ib. 234; and *vide Blagden v. Bradbear*, 12 ibid. 466. It is proper, upon the conclusion of the sale, that the solicitor of the vendor should be prepared with two parts of an agreement similar to one of the preceding, for the completion of the purchase by the respective parties, upon the terms mentioned in the conditions of sale; or a memorandum to the following effect may be indorsed upon two of the printed particulars, one to be retained by each party;

Purchaser of
lands by auction
not bound until
agreement
signed.

Otherwise on
purchase of
goods.

PURCHASES. *Memorandum of Agreement to be signed after a Sale by Auction.*

Conditions
of sale.

It is hereby declared and agreed that _____ of, &c.
is the purchaser of lot _____ in this particular, on the con-
ditions above expressed, at the price of £ _____, and he
hath this day paid to _____ the sum of £ _____ by
way of deposit and in part of the said purchase money. As
witness our hands this _____ day of _____

	£.	s.	d.	A. B. agent for vendor.
Purchase money	...	...	...	C. D. purchaser.
Deposit .....	...	...	...
Balance due...	...	...	...

Or two separate memoranda may be framed, one to be signed
by each party, thus,

Memorandum to be signed by the Auctioneer.

“ I do hereby acknowledge that A. B. of &c. has this
day become the purchaser by public auction, of the estates
(or lot —) described in these particulars of sale, at the sum
of £ _____, and that he has paid into my hands the sum
of £ _____ as a deposit, and in part of the said purchase
money; and I do hereby agree and declare, that the said
particulars and the several conditions subjoined thereto, on
the part of the vendor, are and shall be considered as the
terms and conditions of the said sale on his part, and be by
him fulfilled and observed accordingly, as witness my hand
this _____ day of _____.”

Memorandum to be signed by the Purchaser.

“ I do hereby acknowledge that I have this day pur-
chased by public auction, the estates (or lot —) described in
these particulars of sale, upon and subject to the conditions
thereto subjoined, at the sum of £ _____; and I do hereby
engage to pay the remaining sum of £ _____ unto
at _____ on or before the _____ day of _____ and in all
other respects on my part to perform the said conditions, as
witness my hand this _____ day of _____.”

Although it appears to be admitted that an auctioneer is the agent of both seller and buyer in the sale of goods, and that therefore his signature to the terms of the purchase will be binding on both parties under the statute of frauds, see 1 Ca. Op. 142. *Hinde v. Whitehouse*, 7 East, 558. *Rucker v. Cammeyer*, 1 Esp. Ca. 105. yet it seems to have been formerly the prevailing opinion that in the case of a sale of estates, he was to be considered as the agent of the vendor only, and that therefore it would be necessary within that act, that the agreement should be signed by the purchaser in order to make it a binding contract, *Stansfield v. Johnson*, 1 Esp. Ca. 101. *Walker v. Constable*, 2 ib. 659. 1 Bos. and Pul. 306. *Buckmaster v. Harrop*, 7 Ves. jun. 341. *Coles v. Trecothick*, 9 ib. 234. 1 Smith, 257. But in the case of *Emmerson v. Heelis*, 2 Taunt. 38, the Court of Common Pleas decided that he was an agent for the purchaser, even upon the sale of estates. This decision has been since adhered to by the same Court in *White v. Proctor*, 4 ib. 209, and followed by the Master of the Rolls in *Kemys v. Proctor*, 3 Ves. and Bea. 57.

PURCHASES.

*Conditions
of sale.*

Auctioneer the
agent of both
buyer and seller.

PURCHASES.

*Lease for a
Year.*

No. XIII.

A Lease, or Bargain and Sale, for a Year(1).

THIS INDENTURE of two parts, made the
day of _____, in the [_____] year of the

(1) The nature and operation of the different species of deeds and other assurances, by whom they may respectively be made, of what species of property, and in what cases, have been attempted to be explained by the author in the work to which the present volumes are designed to be supplement, see 4 Elem. Conv. c. 3. All, therefore, that appears to be now requisite is to give the forms of these deeds and assurances as adapted to the different purposes to which they are respectively capable of being applied.

Lease and re-
lease effective
in all cases
where a feoff-
ment good at
common law.

This mode of conveyance may be used in all cases where a feoffment or some equipotent assurance was requisite at the common law to transfer the possession, and is not necessary, perhaps, in any other case; but it is also capable of transferring any species of property of which there may be a seisin to uses, or which (by means of the word "grant" used in the release) is transferrable by *grant*.

If purchaser in
possession, lease
for a year not
necessary.

It may here be observed that if the purchaser be already in possession of the land as a lessee for years, or at will (after entry), see Lit. s. 459, 460, 461. Co. Litt. 70 *b*, 270 *b*, a mortgagee or the like, or have any other particular estate or vested interest in the premises, no bargain and sale will be necessary, the only intent of it being to put the purchaser in possession, or to give him such a particular and vested estate as will enable him to take a release of the reversion expectant upon the determination, and by way of enlargement of such particular estate, Lit. s. 459. 567. 578. Co. Litt. 270 *b*. *Adams v. Steer*, Cro.

reign (2) of our Sovereign Lord George the fourth, **PURCHASES.**
 by the grace of God of the United Kingdom of
 Great Britain and Ireland, King, Defender of the
 Faith, and in the] year of our Lord , **Lease for a**
BETWEEN (*the vendor*) of, &c. of the one part, **Year.**
 and (*the purchaser*) of, &c. of the other **Parties.**
 part (3). **WHEREAS** the said (*purchaser*) has con-

Jac. 210. Nor is any bargain and sale requisite in conveying the part of a joint-tenant, or coparcener, to his co-tenant, as each of these tenants is seised of the part of his companion as well as of his own, and is therefore capable of taking a release of the other's right, Lit. s. 304. Co. Litt. 273 b. Gilb. Ten. 72; but in the conveyance of the part of a tenant in common to his co-tenant, a bargain and sale is absolutely requisite, as the seisin of tenants in common is distinct, and extends only to the respective parts of each. So a release may be made from a trustee to his *cestui que* trust, Lit. s. 462, 463, 464. Co. Litt. 271, and vide 2 Prest. Conv. 289. So by a tenant in fee to tenant by statute merchant, or by elegit, Co. Litt. 270 b. So by a feme covert tenant for life to her husband, ib. 273 b. So by a lord of a manor to his copyhold tenant, 1 Walk. Cop. 366, 367. But it being necessary in order to the operation of a release that there should be a privity between the releasor and releasee, Co. Litt. 272, 273, which by possibility may have been destroyed by an intermediate estate, the omission of the bargain and sale is seldom to be deemed advisable.

In a conveyance of lands lying in Jamaica, however, a lease for a year is not necessary, as such lands will pass by way of grant, see *Goffe v. Elkin*, 2 Mod. 239. And in the conveyance of lands in Ireland no lease for a year is in point of fact ever executed, the recital of it in the release being by an act of parliament of that country made conclusive evidence of its existence. And see *Daly v. Kelly*, 4 Dow. 435.

Lease for a year
not necessary of
lands in Jamaica.

(2) The reign of the king is not material, and may be omitted without prejudice to the deed, see *post*, No. XV. n. (1).

(3) The bargain and sale and the release, although distinct instruments, making together but one assurance, *Barker v. Keat*, 2 Mod. 252. 2 Lord Raym. 801, all persons who are

Lease and re-
lease form to-
gether but one
assurance.

PURCHASES.

*Lease for a
Year.*

WITNESS.
Vendor in con-
sideration of 5s.

tracted with the said (*vendor*) for the purchase of the inheritance in fee-simple of the messuages, lands, and hereditaments hereinafter described. AND WHEREAS for the purpose of transferring the possession of the said lands and hereditaments to the said (*purchaser*) by force of the statute of uses, and enabling him to take a release of the reversion and inheritance thereof to him and his heirs, the said (*vendor*) hath agreed to execute a bargain and sale to him thereof in the manner hereinafter expressed. Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of 5s. (4) of lawful current money of Great Britain to the said (*vendor*) in hand well and truly paid by the said (*purchaser*) at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged), HE the said

Only persons
having an estate
in the lands
need be parties
to a lease for a
year.

necessary parties to the release, for the purpose of transferring any *estate*, whether in possession, remainder, or reversion, must also be made parties to the bargain and sale for a year; but persons having mere rights, or contingent or possible interests only, need not concur in this part of the assurance; a wife entitled to dower need not therefore be a party to the *bargain and sale*, although, for the purpose of declaring the uses of the fine, it is proper that she should be a party to the *release*.

Some valuable
consideration
necessary in a
lease for a year.

(4) Some pecuniary or other *valuable* consideration for a bargain and sale is absolutely requisite for vesting the possession or legal estate in the bargainee under the statute of uses; but so that the consideration be of any although the least conceivable value, as a peppercorn, it will be sufficient for the purpose of raising an use, see *Barker v. Keate*, 1 Freem. 249. 1 Mod. 262. 2 Mod. 249, it is not material, however, that it should be actually paid.

(*vendor*) HATH bargained and sold (5), and by these presents DOTH bargain and sell, unto the said (*purchaser*), his executors, administrators, and assigns, ALL, &c. (6), or howsoever otherwise the said messuages, lands, tenements, and hereditaments, or any of them now are, or is, or at any time heretofore have or has been called, known, described, or distinguished. AND also (7) all other the messuages, lands, tenements, and heredita-

PURCHASES.

Lease for a Year.

 Bargains and
 sells.
 The parcels.

(5) The words "bargain and sell" are the most proper, and only effective words in a lease for a year preceding a release of the reversion. The word "demise" is, however, frequently added to them, but as a bargain and sale under the statute of uses cannot operate as a demise or lease at common law, this word has not of itself any operation for the purpose of giving statutable possession, although it will raise an use at the common law if for a sufficient consideration; and see *Barker v. Keate*, 1 Freem. 249. 1 Mod. 162. 2 Mod. 249. 2 Vent. 35.

 The only proper
 words in a lease
 for a year are
 bargain and sell.

(6) Any estate of freehold or of inheritance, whether in possession, remainder, or reversion, and whether of a corporeal or incorporeal nature, in short, whatever is capable of being limited to an use, may be the subject of a bargain and sale, 2 Co. 54. 2 Inst. 671. Dyer, 309. Lit. s. 617. Co. Litt. 332; and so of a rent if in *esse* at the time, but not a rent granted *de novo*, Keilw. 85. 1 Co. 126. 1 Anders. 327; nor a way, common, or other thing not in *esse*, *Beaudely v. Brook*, Cro. Jac. 189.

 Whatever may
 be limited to an
 use may be the
 subject of a
 bargain and
 sale.

(7) As nothing will pass by the release beyond what the releasee has previously acquired the possession of, or at least vested interest in, by the bargain and sale, particular care should be taken that the bargain and sale comprise an accurate and full description of the lands, &c. intended to be conveyed by the release; hence, to guard against the consequence of any inadvertency in this respect, it will be proper to insert after the description of the premises contained in the bargain and sale (particularly where they are numerous) general words of reference to the lands, &c. comprised in the release, and *vice versa*; see the RELEASE, p. 129, n. (15).

 Nothing passes
 by the release
 which is not
 comprised in the
 lease for a year.

PURCHASES.

*Lease for a
Year.*

To HOLD to the
purchaser for
one year.

ments (if any) which are, or are expressed or intended to be comprised in and granted and released by a certain indenture of release hereinafter referred to as bearing or intended to bear date the day next after the day of the date of these presents, together with all and every the rights, members and appurtenances (8) to the same belonging, or incident thereunto. To HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments, and all and singular other the premises hereinbefore bargained and sold, or mentioned or intended so to be, and every part and parcel thereof, with their and every of their rights, members, and appurtenances, unto the said (*purchaser*) his executors, administrators, and assigns, from the day next before the day of the date of these presents (9), for the term of one year (10), to be thence next

"All ways,"
&c. need not be
inserted in a
bargain and
sale.

(8) As to the inefficacy of inserting in the bargain and sale for a year "all ways, paths, &c." *quæ ipso uso consumuntur*, of which no use can therefore be raised, but which are often included, see the cases cited Brad. Points, 137, and W. Jones, 127; and see Beaudely v. Brook, Cro. Jac. 189.

Releasee should
have a previous
vested interest
to give effect to
the release.

(9) As it is necessary in order to the operation of the release that the releasee should have a vested estate at the time the release is made to him, the limitation to the lessee must be made to commence immediately, and not on a day subsequent to the release, or upon a contingency which may not happen before the release is executed, whence for the greater certainty it is usually made to commence on the day before the date of the release.

But immaterial
for how short a
duration if not
less than a day.

(10) The *habendum* in a bargain and sale to precede a release usually runs "for and during, and unto *the full end and term of one whole year* thence next ensuing, *and fully to be complete and ended*; in this there is no impropriety, only that it seems to lead the student, unacquainted with the peculiar nature and effect of

ensuing; YIELDING AND PAYING (11) for the same the rent of one peppercorn on the last day of the said term if demanded. To AND FOR THE INTENT AND PURPOSE that by virtue of these presents, and by force of the statute made for transferring uses into possession, the said (*purchaser*) may be put into and be in the full and actual possession of the same messuages, lands, tenements, and hereditaments with their appurtenances, and thereby be enabled to accept and take a grant and release of the freehold, reversion, and inheritance thereof, to or for the use of him the said (*purchaser*) his heirs and assigns, by and according to the form

PURCHASES.

Lease for a Year.

At the rent of a peppercorn.

To enable him to take a release of the reversion.

the assurance by lease and release, to imagine that no term less than for one *whole and complete year*, is sufficient to capacitate the releasee to accept of the reversion and inheritance. This, however, would be a conclusion extremely erroneous, as all that is requisite to give operation to the release is to create a seisin, possession, or even vested interest in the releasee, of some particular estate distinct from the inheritance, Co. Litt. 270, a. n. (3); a month, a week, or any smaller portion of time, not less than a day (which is the least period of time the law notices) will therefore be sufficient for this purpose.

(11) The reservation of a rent in a bargain and sale for a year to precede the release, is unnecessary where a pecuniary or other valuable consideration is expressed to have been paid, and is retained in the form here given merely from respect to common usage, see Shep. Prec. Prec. 75; but where no consideration is expressed, this reservation of a peppercorn, upon the principle of its being valuable, will be sufficient to raise an use, and give effect to the assurance, see *Barker v. Keate*, 1 Mod. 262. 2 Mod. 249. *Sutton's Hosp.* 10 Co. 3. *Anon.* 2 Vent. 15, sed vid. *Shortgrave v. Rope*, 2 Rol. Rep. 205. See also *Porter's case*, 1 Co. 24, where one penny was held to alter the use of a feoffment, and cause the feoffee to be seised to his own use.

Reservation of a peppercorn rent sufficient to raise an use.

PURCHASES.

*Lease for a
Year.*

and effect and true intent and meaning of a certain indenture of grant and release (12) of the same premises, already prepared and engrossed, and made or expressed to be made between the same persons as are parties hereto, and bearing or intended to bear the day next after the day of the date of these presents. IN WITNESS, &c. (13).

*Lease for a year
should refer to
the release.*

(12) This reference to the deed of release is proper for the purpose of shewing that the bargain and sale and release are intended to make one and the same assurance, and of furnishing presumptive evidence of its having existed in case it should be lost, and see *Snell v. Silcock*, 5 Ves. 459.

Sealing, &c.

(13) As to the sealing, delivery, attestation, &c. see the notes subjoined to the release.

*Need not be
enrolled.*

. A bargain and sale for a year need not be enrolled, the statute of enrolments, 27 Hen. VIII. c. 10, extending only to bargains and sales purporting to pass an estate of freehold or of inheritance. And see 2 Co. 36. 8 ib. 94. 2 Inst. 671. 2 Roll. Rep. 204.

No. XIV.

*A shorter Form of a Lease, or Bargain and Sale,
for a Year (1).*

Variations where the Conveyance is of an Estate for Life only.

Where it is of a Reversion.

Where it is of a Moiety or other portion only of an Estate.

Where it is of an Advowson or other incorporeal hereditament.

Where the Release is to Uses to bar Dower.

Where the Conveyance is by a Corporation, and the Lease is a Lease at Common Law.

THIS INDENTURE made the day of
 in the year of our Lord ,
 BETWEEN (2) (*the vendor*) of, &c. of the one part,
 and (*the purchaser*) of, &c. of the other part (3),
 WITNESSETH, that for and in consideration (4) of

(1) In what cases a lease for a year may be omitted, see *ante*, No. XIII. p. 110, n. (1).

(2) See *ante*, No. XIII. p. 111, n. (3).

(3) If the conveyance be intended to be made to the purchaser and trustee to prevent dower, the vendor and purchaser may be respectively named as of the first and second part, and the trustee of the third part; or the purchaser and trustee jointly of the second part; but the order in which the parties are named is immaterial. Uses to bar dower.

(4) See *ante*, No. XIII. p. 112, n. (4).

PURCHASES. the sum of 5s. of lawful current money of Great Britain to the said (*vendor*), in hand well and truly paid by the said (*purchaser*), at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, HE the said (*vendor*) HATH bargained and sold (5 *v*), and by these presents DOTH bargain and sell unto the said (*purchaser*) (6 *v*), his executors, administrators, and assigns, ALL, &c. (7 *v*),

*Lease for a
Year,
short form.*

Lease at common law.

(5) The intent of the bargain and sale for a year being to give a seisin or possession of the land to the purchaser under the statute of uses, for the purpose of enabling him to take a release of the reversion and inheritance, if the vendor be incapable of standing seised to uses, as in the case of an alien or a body corporate, possession must be given to the releasee, either by livery, or by entry upon the land, Co. Lit. 46.; in these cases, therefore, if the conveyance be by lease and release, a lease for a year at *the common law*, followed by an actual entry on the part of the lessee, must be made use of instead of a bargain and sale, and instead of the words in the text, say,

“HATH demised and leased and by these presents DOTH demise and lease.”

Uses to bar dower.

(6) If the conveyance be intended to be made to the purchaser and a trustee to bar dower, say,

“Unto the said (*purchaser*) and (*trustee*), their executors, administrators, and assigns.”

Lease to one will support a release to more.

It is not however material that the lease for a year should be made to the purchaser and trustee jointly; for a lease for a year to either would support a release to both. See Doe dem. Saunders v. Cooper, 1 Holt. 461.

Moiety.

(7) If the conveyance be of a moiety or other portion only of an estate, say,

“ALL that full and undivided moiety or half part, the whole into two equal moieties or half parts being considered as divided, of and in ALL, &c.”

and also all other (8) the messuages, lands, tenements, and hereditaments (if any) comprised in the indenture of release hereinafter referred to, together with all and every the rights (9), members, and appurtenances to the same belonging: To HAVE AND TO HOLD (10v) the said messuages,

PURCHASES.

*Lease for a
Year,
short form.*

If it be of a remainder or reversion expectant upon the determination of any particular estate in being, say, Reversion.

“ALL, &c. now in remainder or reversion expectant and to take effect in possession upon the decease or other sooner determination of the estate for life of (*the tenant for life*).”

If the conveyance be of an advowson, say, Advowson.

“All that the advowson, right of nomination, presentation, collation, donation, and free disposition of, in, and to ALL that rectory, vicarage, parsonage, or parish church of in the county of .”

(8) See *ante*, No. XIII. p. 113, n. (7).

(9) See *ibid*, n. (8).

(10) If the conveyance be of a moiety, or other portion only of an estate, say, Moiety, &c.

“TO HAVE AND TO HOLD the said undivided moiety or half part hereby bargained and sold or intended so to be, of and in the said messuages, lands, tenements, hereditaments, and premises hereinbefore described, unto the said (*purchaser*), &c.” *as above*.

If the conveyance be of a remainder or reversion, say, Reversion.

“TO HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments, and all and singular other the premises hereinbefore bargained and sold, or intended so to be, and so in remainder or reversion expectant as aforesaid, unto the said (*purchaser*), &c.” *as above*.

If the conveyance be of an advowson, say, Advowson.

“TO HAVE AND TO HOLD the said advowson, right of patronage, and free disposition of, in, or to the said rectory, vicarage, parsonage, or parish church of unto the said (*purchaser*), &c.” *as above*.

PURCHASES.

*Lease for a
Year,
short form.*

lands, tenements, hereditaments, and all and singular other the premises hereinbefore bargained and sold or intended so to be, unto the said (*purchaser*) (11 *v*), his executors, administrators, and assigns, from the day next before (12) the day of the date of these presents, for and during and unto the full end and term of one whole year (13) thence next ensuing, and fully to be complete and ended (14 *v*); YIELDING AND PAYING (15), therefore unto the said (*vendor*), his heirs or assigns, the rent of one peppercorn on the last day of the said term, if the same shall be lawfully demanded. To THE INTENT and purpose, that by virtue of these presents, and by force of the statute made for transferring uses into possession (16 *v*), the said (*purchaser*) (17 *v*) may be put into and be in

Uses to bar
dower.

(11) If the conveyance be intended to be made to the purchaser and a trustee to bar dower, say,

“Unto the said (*purchaser*) and (*trustee*), their executors, administrators, and assigns.”

(12) See *ante*, No. XIII. p. 114, n. (9).

(13) See *ibid*, n. (10).

Estate for life.

(14) If the conveyance be of an estate for life only, add,

“If the said (*vendor*) shall so long live.”

(15) See *ante*, No. XIII. p. 115, n. (11).

Lease at common law.

(16) If the conveyance be by persons who are incapable of being seised to an use, and a lease at common law be therefore necessary, instead of the words in the text say,

“To the intent and purpose that by virtue of these presents, and of actual entry to be had and made into and upon, and possession taken of the said demised premises, the said (*purchaser*) may be enabled, &c.” *as above*.

Reversion

(17) If the conveyance be of a remainder or reversion, say,

the full and actual possession of all and singular **PURCHASES.**
 the premises hereby bargained and sold or in-
 tended so to be, and thereby be enabled to ac-
 cept (18 v) and take a grant and release of the
 freehold, reversion, and inheritance thereof, to
 or for the use of him the said (*purchaser*) (19 v),
 his heirs and assigns, by and according to the
 form and effect and true intent and meaning of a
 certain indenture of grant and release (20) already
 prepared and engrossed, and intended to bear date
 the day next after the day of the date of these
 presents, and made or expressed to be made be-
 tween the same persons as are parties hereto. In
 WITNESS, &c.

*Lease for a
 Year,
 short form.*

“ The said hereditaments so in remainder or reversion expectant as aforesaid may become and be legally and fully vested in the said (*purchaser*), so and in such manner that he may be enabled to take a release of the freehold and inheritance, &c.” *as above.*

(18) If the conveyance be of an estate for life, say,

Estate for life.

“ Accept and take a grant and release of the freehold and reversion thereof, to or for the use of him the said (*purchaser*), his heirs and assigns, during the life of the said (*vendor*), according, &c.” *as above.*

(19) If the release be intended to be made to uses, either to prevent dower or for any other purpose, say, **Release to uses,**

“ To them the said (*purchaser*) and (*trustee*) and their heirs, to such uses, upon such trusts, and for such ends, intents, and purposes as in and by a certain indenture of release already prepared and engrossed, and bearing or intended to bear date on the day next after the day of the date of these presents, and made or expressed to be made between the same persons as are parties hereto, are or shall or may be declared or expressed of or concerning the same.”

(20) See *ante*, No. XIII. p. 116, n. (12).

PURCHASES.

Release.

No. XV.

A Release(1) *of the Inheritance in Freehold Lands from a Vendor to a Purchaser, to be accompanied by a Bargain and Sale (or Lease) for a Year.*

Parties.

Recital, that
vendor is seised
in fee.

THIS INDENTURE of two parts, made the day of , in the year of the reign(2) of our Sovereign Lord George the fourth, by the grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, and in the year of our Lord (3), BETWEEN (*the vendor*) of, &c. of the one part, and (*the purchaser*) of, &c. of the other part.

WHEREAS the said (*vendor*) is seised in his demesne as of fee by descent from his ancestors of the

(1) See *ante*, p. 110, n. (1), as to the nature, &c. of this species of release.

Year of reign
not necessary.

(2) It is not material that the year of the reign of the king should be mentioned; see *Dodson v. Hayes*, Yelv. 193. *Cromwell v. Grunsden*, 2 Salk. 462.

The time of de-
livery is the true
date of a deed.

(3) As deeds, anciently, could not be pleaded after time of memory, they in general bore no date, Co. Litt. 6, a. nor is the date now essential, as the time of the delivery is the actual *datus* or date from which the operation of the deed commences; but as the want of a date would in many cases be attended with great inconvenience, by putting the purchaser to prove the time of delivery, it is evidently proper that it should be inserted.

several messuages, lands, and hereditaments hereinafter described (4). AND WHEREAS the said (*purchaser*) hath contracted with the said (*vendor*) for the absolute purchase of the said messuages, lands, tenements, and hereditaments, and the inheritance in fee-simple in possession thereof, free from incumbrances, (other than as hereinafter is mentioned) at or for the price or sum of £ ; and the same are now intended to be conveyed to him and his heirs in the manner hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that in pursuance and execution of the said contract, and in consideration of the sum of £ (5) of

PURCHASES.

Release.

Contract for purchase.

INDENTURE WITNESSETH, that in consideration of the purchase money.

(4) In *Browning v. Wright*, 2 Bos. and Pul. 25, Lord Eldon, Ch. J. seems to have considered that the recital by a vendor of his being seised in fee, &c. amounted to a warranty of title; and see *Johnson v. Proctor*, Yelv. 175. Cro. Eliz. 809. Cro. Jac. 233, S. C.; if so, such recital is dangerous, but it does not seem that there can be any ground for such construction; for as a recital is no direct assertion, it cannot conclude the party, Co. Litt. 352 *b.* unless it be a special recital, in which case it may work an estoppel against the party making it averring any thing to the contrary; see *Rees v. Lloyd*, Wightw. 123; but otherwise of a general recital, *ibid.* and Roll. Ab. 872.

Recital of seisin.

(5) There is not any actual necessity for a consideration to be mentioned in a release, in order to its validity as such, see *Shortridge v. Lamplugh*, 2 Salk. 678. 3 *ibid.* 386, S. C. 2 Lord Raym. 798, S. C. But see now 48 Geo. III. c. 149, sec. 22, by which it is enacted under heavy penalties both to the solicitor and purchaser, "that in all sales of land or other property, upon the conveyance of which the *ad valorem* duty is payable, the full purchase or consideration money, directly or indirectly paid or secured or agreed to be paid, shall be set forth in words at length in the principal, or the only deed or instrument." And to prevent the conveyance being void as against creditors and third persons, the consideration must be actually paid. See *Doe dem. Willis v. Martin*, 4 Durnf. and E. 39.

No consideration necessary in conveyance by release.

But the consideration actually paid must be stated.

PURCHASES.*Release.*

lawful money (6) of the United Kingdom of Great Britain and Ireland, of English value and currency, to the said (*vendor*) in hand well and truly paid by the said (*purchaser*) at or immediately before the sealing and delivery of these presents, the receipt whereof, and that the same is in full for the absolute purchase of the inheritance in fee-simple, in possession, of the messuages, lands, tenements, and hereditaments hereinafter described, the said (*vendor*) doth hereby acknowledge, and of and from the same, and every part thereof, doth acquit, release, exonerate and for ever discharge the said (*purchaser*), his heirs, executors, administrators, and assigns, and also the said messuages, lands, tenements, and hereditaments (7), as well by these presents as by the

Lawful money.

(6) Lawful money of England consists of gold and silver, 2 Inst. 577. 3 Inst. 17, and is of two sorts, viz. English money coined by the king's authority, or foreign coin made current in the realm by the king's proclamation, Co. Litt. 207 *b*: there is, however, at this time no foreign money in circulation.

Purchase money, if not paid, is an equitable lien on the land.

(7) The vendor has an equitable lien on the land for the purchase money if not paid; see *Pollexfen v. Moore*, 3 Atk. 272. *Chapman v. Turner*, 1 Vern. 267. *Blackburn v. Gregson*, 1 Brow. Ch. Ca. 420. *Hughes v. Kearney*, 1 Sch. and Lef. 132. *Mackreth v. Simmonds*, 15 Ves. 329; and this lien descends upon the heirs, and extends to all others who claim under the vendor with notice of the nonpayment, *Charles v. Andrews*, 9 Mod. 151, 153, although purchasing for a valuable consideration, *Gibbons v. Baddall*, 2 Eq. Ca. Ab. 682, D. n. (b). *Elliot v. Edwards*, 3 Bos. and Pul. 181. *Trimmer v. Bayne*, 7 Ves. jun. 508. 9 *ibid.* 209, and even without notice if the conveyance be voluntary, or be effected by operation of law, *Fowler v. Heelis*, Amb. 724. *Walker v. Preswick*, 2 Ves. 622. *Exp. Hunter*, 6 Ves. jun. 94. *Bowles v. Rogers*, 6 Ves. jun. 95, n. (a).

receipt or acknowledgment for the same sum here-upon indorsed (8), and for divers other good and

PURCHASES.

Release.

And although other security, as a bond, &c. be taken for payment, yet it makes no difference, *Exparte Loaring*, 2 Rose, 79, unless it was the intent of the parties that such security should alone be relied upon, the proof of which, if not apparent, it will belong to the purchaser to produce. *Mackreth v. Simmonds*, 15 Ves. 354. *Hughes v. Kearney*, 1 Sch. and Lef. 132. On the other hand also if the money be paid by the purchaser before the conveyance be executed by the vendor, it will, until such conveyance be executed, be a charge upon the premises in the hands of the vendor. This lien, however, it is to be observed, subsists only as between the vendor and purchaser or persons claiming under them, and not third persons, *Pollexfen v. Moore*, 3 Atk. 272, and it may be prevented either by a contrary agreement expressed, or by implication arising from the nature of the transaction between the parties, *ibid.* 347. *Austin v. Halsey*, 6 Ves. 483. as where other property is pledged or a collateral security taken for the payment, *Naim v. Prowse*, 6 Ves. 752. But as this will not always of itself exonerate the estate, but requires some further evidence showing such to have been the intention of the parties, see *Mackreth v. Simmonds*, 15 Ves. 347. *Fawell v. Heelis*, Amb. 724. 1 Dick. 485. *Bond v. Kent*, 2 Vern. 250. *Hughes v. Kearney*, 1 Sch. and Lef. 136, no collateral security should be depended upon for that purpose without its being accompanied by an express declaration that it was given with an intent to exempt the land from the lien which the law would otherwise impose upon it. But the lien which the vendor has for the purchase money, it may further be noticed, does not exclude him from coming in with other creditors on the personalty of the purchaser, should he become a bankrupt, *Trimmer v. Baine*, 9 Ves. 209. *Mackreth v. Simmonds*, 15 *ibid.* 338, although it does not oblige him to do so.

(8) It is always proper that a receipt for the purchase money should be indorsed on the deed, and signed by the vendor, as the acknowledgment of payment contained in the body of the deed is not conclusive evidence of the payment, unless great length of time has elapsed—see *Thurle v. Madison*, Sty. 462. *Goddard v. Complin*, 1 Ca. Chan. 119. *Fleetwood v. Templeman*, Barn. Cha. Rep. 186. *Bidlake v. Arundel*, 1 Rep. Ch. 95.

Receipt in body of the deed not sufficient evidence of payment, unless after great length of time.

PURCHASES. valuable considerations him thereunto moving (9),
 He the said (*vendor*). HATH (10). granted, bar-

Release.

The vendor
 grants and
 releases.

Coppen v. Coppen, 2 P. Wms. 290. (295). Indeed from the last of these cases it should seem that ~~even~~ a separate receipt signed by the vendor for the purchase money, will not be conclusive evidence of the payment, sed vid. Co. Litt. 373, a. where it is said, that an express and separate receipt is conclusive evidence of payment, which cannot be rebutted by any *aliunde* evidence; and see accord Browntree v. Jacob, 2 Taunt. 141, where a receipt indorsed was held to be a bar, although there was great reason to suspect the money had not been actually paid; but *quære* this, unless such receipt or acquittance be by deed, and see Stratton v. Rastall, 2 Durnf. and E. 66. It however behoves a vendor to be very cautious in signing a receipt before the money be actually paid to him or his agent. If therefore the whole of the money be not in fact paid at the time of executing the conveyance, but a security be accepted for the payment, an express declaration should be made by the parties and indorsed on the deed that such security was taken in lieu and full satisfaction of the purchase money, and in exoneration of the premises. And see *ante*, INTRODUCTION.

"Other considerations."

(9) These words are generally inserted in the printed books, in order, as it is said, that should the real consideration mentioned in the deed fail, others may be averred, vide Lacy v. Whetston, Cro. Eliz. 343. Walker v. Burrows, 1 Atk. 93, but *quære* the force of this reason at the present day, and vide Beddell's Ca. 7 Co. 133, also Murray v. Palmer, 2 Sch. and Lef. 483, where Lord Redesdale is said to have considered these words as evidence of fraud.

"Hath granted."

(10) When conveyances were made by *oral* declaration only, vid. Mad. Form. preface, and the written instrument afterwards signed by the parties was intended merely for the purpose of furnishing more certain and permanent evidence of the transaction; these granting words in the *past* time were appropriate, but since the statute of frauds and perjuries (29 Car. II. c. 3.) has required every grant of land and other hereditaments to be in writing, words expressive of a transfer *anterior* to the written instrument by which it is effected, seem to be at best but nugatory in any case, and more particularly so in a grant, as that

gained, sold, aliened, and released, and by these presents DOTH for himself and his heirs, grant, bargain, sell, alien, release (11), and confirm unto

PURCHASES.

Release.

could not, even before the statute, be made otherwise than by deed, see Shep. Touch. 227, by some modern conveyancers they are therefore omitted; (see in particular the drafts of the late Mr. Watkins); but where words or phrases come to us sanctioned by the acquiescence of a succession of conveyancers of acknowledged eminence in their profession, and are fraught with no other objection than that of being harmless, I am inclined to think it better to prepare the way for their gradual disuse by noticing their inefficiency, than by at once rejecting them, arouse the fears, or disturb the prejudices, of the many who have accustomed themselves to consider long and settled usage as the best, if not the only, criterion of propriety. And see Shep. Prec. 75, and Pref. Lit. p. xii.

(11) The word "release" is the word peculiarly operative in this species of conveyance, and from which it takes its denomination; but most of the others generally made to accompany it seem to be proper. The word "grant" applies peculiarly to the *estate* of the vendor, and the *reversion* of the land expectant upon the determination of the bargain and sale for a year, or other existing particular estate where there is no such privity between the grantor and grantee as is requisite to give effect to the deed as a release; also to the title deeds; rights of common, and other *incorporeal* hereditaments appurtenant to the land. The words "bargain and sell," are used for the purpose of enabling the purchaser to give effect to the conveyance as a bargain and sale by inrollment, (but without which they have no operation, Moor, 34. Godb. 7. Cro. Jac. 210), should it be deemed expedient to do so by reason of the lease for a year having been omitted to be executed, or the like; although it should seem, that if the deed be indented and be made for a valuable consideration, it might by inrollment be made to have the effect of a bargain and sale under the statute, although these words were not used, and see Fox. Ca. 8. Co. 94. Anon. 8 Leon. 16. And the word "confirm" may perhaps in some cases give effect to the conveyance, where it would fail to take effect as a release for want of privity between the releasee and

The word "release" is the proper operative word.

The words "bargain and sell" will enable the purchaser to enrol the deed.

PURCHASES.

Release.

The parcels.

the said (*purchaser*) and his heirs (12), ALL that, &c. (13), or howsoever otherwise (14), the said messuages, lands, tenements, and hereditaments, or any of them now are or is, or heretofore were

the releasor, see Lit. sec. 516; but where it is intended to operate by way of enlargement of a preceding estate, the same privity is necessary to give effect to a confirmation as in a release. The word "alien," *alienum facere*, seems to have no other import than generally to transfer the property to another.

"Heirs" essential to pass a fee.

(12) The word "heirs" is essential to pass the fee in a deed, see Lit. sec. 1, Co. Litt. 6 *a*, except when the purchaser is a co-joint-tenant with the vendor, Co. Litt. 9 *b*. 193 *a*. and in some other cases, see Co. Litt. 9 *b*. 10 *a*. it might however be omitted here and first used in the *habendum*.

Parcels should be so described as to identify them with those in the title deeds.

(13) In the description of the premises care should be taken to preserve as nearly as possible the description contained in the last and prior assurances, where no variation has taken place in them; but if there has been, then so to describe them with reference to their former names, boundaries, &c. as to connect the present with the former or ancient description, in such a manner as that their certainty and identity may appear without the necessity of having recourse to any other deed or evidence; which it may be difficult or impracticable to procure, see 1 Prest. Conv. 184. A small variation however in the last from any other preceding description will not vitiate it, see *Calverley v. Williams*, 1 Ves. jun. 210. and see *Finch's Ca.* 6. Co. 63.

Where premises have undergone alterations purchaser may require a guarantee of their identity.

And if the description of the premises be so varied by alterations made since the last conveyance as to obscure their identity, the purchaser has a right, according to Mr. Fearn, to expect a covenant from the vendor that they are the same as those conveyed to him by his vendor, which will oblige the present vendor or his representatives to prove their identity if requisite, or to make compensation for want of it, see *Fearn. Posth. Wks.* 119.

A change in description should be provided for.

(14) As the description of the parcels is frequently taken from ancient title deeds, without attending to the changes which they have since undergone, this qualification is in general proper to prevent any error in the description, arising from such changes, being construed to vitiate the grant.

or was situated, tenanted, called, known, described, or distinguished; and also all other (15) the messuages, lands, tenements, and hereditaments (if any) which are or are expressed or intended to be described or comprised in a certain indenture of bargain and sale hereinafter referred to as bearing date the day next before the day of the date hereof; which said messuages, lands, tenements, and hereditaments, were lately or formerly the estate and property of A. B. late of , deceased, from whom they descended to, and are now vested in the said (*vendor*) as his heir at law. TOGETHER with all houses (16), outhouses, buildings, barns, stables, coach-houses, dove-houses (17),

PURCHASES.

Release.

General words.

(15) As nothing will pass by the release, although expressly described, unless it be also comprised in the bargain and sale for a year, (where a bargain and sale is requisite) these words of reference are proper wherever the land, &c. consists of a variety of parcels, in order to guard against any such inadvertent omission; and see Shep. Prec. Prec. 75, also 10 Ves. jun. 255, and Phillips v. Jones, 3 Bos. and Pul. 362, and see also *post*, p. 131, n. (20).

Nothing passes by the release which was not included in the lease for a year.

(16) These general words must be made to correspond with the nature of the subject of the conveyance, and see *post*, No. XVI.

General words should correspond.

(17) A dove or pigeon-house may now be legally enjoyed and pass with other freehold hereditaments, by whomever it was erected; it may also be erected by any freeholder upon his own grounds at pleasure. See Dewell v. Sanders, Cro. Jac. 490; but it is otherwise when the lands are part of a manor, in which case it can only be erected by the lord, Brownlow's Ca. 5 Co. 105. Boulston v. Hardy, Cro. Eliz. 547; or by some person licensed by him, Arnold v. Jefferson, 3 Salk. 247; it may however be enjoyed by prescription, which supposes such license to have been formerly given, Co. Litt. 8 a.

Dove-houses.

PURCHASES.*Release.*

yards, cellars, vaults, areas, benefit and advantage of ancient and other lights (18), ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, pumps, pipes, drains, water-courses, timber, and other trees, woods, under-woods, and the ground and soil thereof, mines, quarries, wastes, rights and privileges of common and of feeding and foldage of every kind, and all and all manner of other rights, members, privileges, advantages, commodities, appendages, and appurtenances whatsoever, to the said messuages, lands, tenements, hereditaments and premises belonging, or in anywise incident or appertaining, or reputed or deemed so to be, or with the same or any part thereof, now or heretofore holden, used, occupied, or enjoyed; except,

Purchaser should guard against obstruction of lights where vendor has other houses adjoining.

(18) If the conveyance be of a dwelling house or other habitable building, and the vendor have other houses or land adjoining, which may be so altered or built upon as to obstruct the enjoyment of the light, care should be taken by express stipulation in the purchase deed, to guard against such inconvenience; similar precautions will also be necessary on the part of the vendor, where the conveyance is of land which may be built upon adjoining to any dwelling house, &c. of the vendor. And see *Compton v. Richards*, 1 Price, 27.

Ancient lights are those which have been enjoyed for 20 years.

Ancient lights, it may be observed, are those which have been enjoyed for at least twenty years past, see *Martin v. Goble*, 1 Campb. 320. *Chandler v. Thompson*, 3 *ibid.* 80, and *Daniel v. North*, 11 East, 372; and if an old house having ancient lights be pulled down and a new one built, the lights, in order to retain the privilege of the former ones, must be in the same place and of the same dimensions as those in the original dwelling, see *Cherrington v. Abney*, 2 Vern. 646.

&c. (19). (ALL which said messuages, lands, tenements, and hereditaments, are now in the actual possession of, or legally vested in the said (*purchaser*) by virtue of a bargain and sale (20),

PURCHASES.

Release.

Reference to bargain and sale.

(19) If any thing which has been usually enjoyed with the lands sold is not intended to pass, care should be taken on the part of the grantor that it be expressly excepted, as there will otherwise be danger of its passing by the general words used in the conveyance, although it may be of a different nature from the subject of the grant, and of a kind which the assurance is not properly calculated to pass, see *Doe dem. Davies v. Williams*, 1 Hen. Blac. 25.

Care should be taken to except out of a conveyance what is not intended to pass.

(20) As the recital of a bargain and sale for a year is evidence as against the vendor and all claiming under him (but not others) of there having been one, *Ford v. Lord Grey*, 6 Mod. 44. 2 Lev. 108, S. C. 1 Salk. 285, S. C. *Annandale v. Harris*, 2 P. Wms. 432. *Dillon v. Crawley*, 12 Mod. 500; it is proper that some reference should be made to it, as well for the sake of such evidence in case it should hereafter be lost or missing, as to show the intent of the parties that the conveyance is intended to operate by way of lease and release. Vid. also *Brown v. Jones*, 1 Atk. 187, and *Holmes v. Ailsbie*, 1 Madd. 551, and 3 Prest. Abs. 28.

Recital of lease for a year evidence against vendor.

This reference to the bargain and sale for a year is frequently made immediately after the operative words of the deed, and before the parcels have been at all described, as "He the said, &c. doth grant, &c. (in his actual possession now being)," &c. but this is exceedingly awkward, as the words in the parenthesis have no antecedent to which they can refer. If, therefore, the bargain and sale be recited in the incidental way in which it is referred to in the text, (which it now universally is) this part of the release appears to be the most proper to introduce it; and see *Shep. Prec. Prec.* 74. But the more scientific mode of noticing the bargain and sale would, it is submitted, be by a distinct recital of it immediately before the witnessing part of the deed, as in the variation subjoined to No. XVI.

Observations on the common mode of reciting a lease for a year.

Shepherd, in his *Precedent of Precedents*, has recommended that no reference be made in the release to the bargain and sale, and that words of feoffment and of bargain and sale be added to those of a release, in order that the deed may be exe-

PURCHASES. to him thereof made by the said (*vendor*) for 5s.

Release.

consideration by an indenture bearing or intended to bear date on the day (21) next before, and executed previously to the sealing and delivery of these presents, for the term of one year, commencing from the day next preceding the day of

cuted by livery, or inrolment, if the bargain and sale should be lost—see Prec. Prec. 75. 227; but quære this, for a bargain and sale must be enrolled within six months from the date, and a feoffment must be perfected by livery in the lifetime of the parties; should therefore these respective periods have elapsed, and the lease for a year, (as supposed), be lost, the release would be void without remedy, whereas it would, after lapse of time, be supported by this recital of the lease for a year, although it should not appear to be in existence. Vide Ford v. Lord Grey, 6 Mod. 44. 1 Salk. 285, S. C. 2 Lev. 108, S. C. Snell v. Silcock, 5 Ves. 469; and see *ante*, p. 129, n. (15).

“On the day next.”

(21) Shepherd recommends, that if the bargain and sale preceding the release be recited (which however he disapproves), see *ante*, n. (20), it be mentioned to be dated “before the date,” and not “before the *day* of the date,” of the release, as it usually is, lest the conveyance should be vitiated by either of the decds being misdated—see Prec. Prec. 75; but any error in the date would now be amended by construction, and see Ramsbottom v. Tunbridge, 2 Maul. and Sel. 434, where a lease for a year, although dated two days before the date of the release, but referred to as bearing date the day next before the date of the release, was deemed sufficient to support the release. This is a case which frequently happens, from the circumstance of the conveyance being executed on a Monday, when should the lease for a year be dated on the preceding day, it would appear to have been executed on a Sunday; in order to avoid this, the date of the lease for a year has been altered to the day preceding, without making the necessary alteration in the reference to it in the body of the release. This caution, however, is not necessary, for a deed dated or even executed on a Sunday will be as valid as if dated or executed on any other day, and see 2 Prest. Prac. 362.

the date of the same indenture, and by force of the statute made for transferring uses into possession). And the reversion and reversions, remainder and remainders, expectant upon the said term, or of any other particular estate or estates, of or in the said hereditaments and premises, or any of them respectively. AND all and singular the rents (22), issues and profits to arise or become payable for or in respect of the same premises or any part thereof, from the day of now last past (23). AND all the estate (24), right, title, interest, use, trust, property, inheritance, possession, term and terms for years, and for life or lives, right and equity of redemption, possibility (25), claim, and demand whatsoever,

PURCHASES.

Release.

(22) This grant of the reversion and rents of the estate is sometimes made in a separate form, see 1 Bridgm. Conv. 89, 264, 281, and as these incorporeal species of hereditaments are more properly the subject of a grant at the common law, than a conveyance by lease and release, there appears to be a propriety in this; but the mode now in use is equally efficacious, and the form alluded to would if adopted increase the length of the deed, which it is now an object to avoid.

Reversion.

(23) A purchaser is, as of course, unless it be otherwise agreed upon, entitled to the rents and profits from the last quarter day preceding his purchase, and it is the same where the sale is under a decree, so that he pay his purchase money before the following quarter, see *Wren v. Kirton*, 8 Ves. 502. 11 *ibid.* 377.

Purchaser entitled to rent from last quarter day.

(24) These words are so generally found in every conveyance that they are apt to be considered as words of course, and inserted indiscriminately, but unless the whole estate of the grantor is intended to be parted with, they should be omitted: the intent will however govern the construction, see *Wright v. Cartwright*, 1 Burr. 282.

"All the estate."

(25) A mere possibility being assignable in equity, *Jewson v. Moulson*, 2 Atk. 417. *Worrall v. Marlar*, 1 P. Wms. 459, n.

Possibility assignable in equity.

PURCHASES. both at law and in equity, of him the said (*vendor*)
 in, to, out of, upon, or respecting the said here-
Release. ditaments and premises, or any of them, or any
 Grant of title part thereof; TOGETHER WITH all deeds (26), ex-
 deeds.

Mitford *v.* Mitford, 9 Ves. 87; although not at law, it is usually introduced amongst the sweeping words of title, that no scintilla of interest in the vendor may be left behind.

Title deeds will pass without a grant of them if there is no warranty of title.

(26) In cases where the vendor enters into a warranty with the purchaser it seems necessary to insert an express grant of the title deeds, as the vendor will otherwise, it is said, have a right to retain "all such charters and evidences as are material for the maintenance of his title to the land," see Buckhurst's case, 1 Co. Rep. 1, and 1 Inst. 6 *a*. Wood, 269; for being bound by his warranty to guarantee the land to the purchaser (or render him an equivalent in value in case of eviction), it is reasonable that he should be allowed to possess the evidences necessary to defend the title he has warranted. This reasoning, however, and of course the doctrine founded upon it, extends to such deeds only as relate to the *title*, and not to such as merely concern the purchaser's *possession*, as the court rolls of a manor, or the like. But where the vendor does not enter into a warranty for the title, the *purchaser*, it should seem, from a parity of reasoning, will have a right to the deeds, although they may not have been expressly granted to him in the conveyance; for as the purchaser must in this case defend his own title, it is equally necessary, as in the opposite case, that he should be furnished by the vendor with the means of doing it. This distinction will, perhaps, reconcile the contrary positions which are met with in the books upon this subject, and see Brooks Ab. tit. *Chattels*, 18. 2 Blac. Comm. 428. Sheph. P. P. 88. Yea *v.* Field, 2 Durnf. C. 709.

Grant of title deeds proper in conveyance to uses.

It seems also proper to insert a grant of the title deeds, where the conveyance is to trustees to uses; because though the statute of uses will transfer the legal estate to the *cestui que* use, yet it will not, it is said, transfer the deeds—see Stockman *v.* Hampton, Cro. Car. 441. Estofte *v.* Vaughan, 3 Dy. 277 *a.* *sed vide* Co. Litt. 6 *a*, n. (4). 1 Co. 1. Cru. Us. 147; they may, however, be granted away from the land, Co. Litt. 232 *b*.

tracts of wills, muniments, writings and evidences whatsoever, which in anywise relate unto the same messuages, lands, tenements, hereditaments, and premises, or any of them, either alone or together with other hereditaments or property of inferior value, and which now are or hereafter shall or may be in the possession or lawful power of the said (*vendor*), his heirs, executors, or administrators, or of any person or persons from whom he, they, or any of them, can or may procure the same, without action or suit at law or in equity; and true and attested copies (27) duly stampd, (when and as the said (*purchaser*), his heirs or assigns, shall require the same) of the several deeds, muniments, writings, and evidences comprised or mentioned

PURCHASES.

Release.

Attested copies.

This grant of the title deeds is in some of the old precedents of good authority made by a separate grant—see Shep. Prec. Prec. 85. 1 Bridgm. 23. 264; but the above mode is equally effectual, and accords better with the present general wish for conciseness.

(27) Where the vendor does not deliver the title deeds the purchaser is entitled to attested copies of them at the vendor's expense—see *Berry v. Young*, 2 Esp. Ca. 640, *n.* *Dare v. Tucker*, 6 Ves. 460. But there seems to be a difference of opinion amongst practitioners, with respect to whether it be sufficient that such copies be *simply attested* as accurate and true copies, or whether they should also be impressed, at the expense of the vendor, with the stamp required by the 55 Geo. III. c. 184; but as they are delivered in lieu of the original deeds, and as they are *not admissible in evidence unless stamped* agreeably to that act, it should seem that they cannot be reasonably considered as sufficiently perfect for delivery, unless accompanied by this evidence of the duty having been paid; and see *Dare v. Tucker*, *supra*, and also *ante*, INTRODUCTION.

Purchaser entitled to attested copies of deeds not delivered.

PURCHASES. in the schedule (28) hereunder written, or here-
 unto annexed; and of all other deeds, muniments,
 writings, and evidences (if any) not being of
 record (29) which now are or hereafter shall or
 may be so in his, their, or any of their possession,
 custody, or power as aforesaid, in any wise relating
 to the same hereditaments and premises, or any of
 them, jointly with other hereditaments or pro-
 perty of equal or greater value; such copies when
 first required, to be made and delivered at the ex-
 pense of the said (*vendor*), his heirs, executors, or
 administrators, but all future or subsequent copies
 to be made and taken at the expense of the said
 (*purchaser*), his heirs or assigns. **TO HAVE AND TO**
HOLD (30) the said messuages, lands, tenements,

TO HOLD in to
 the purchaser
 in fee simple.

If the title deeds
 are given up no
 schedule or
 copies requisite.

(28) If all the deeds and evidences relating to the subject of the conveyance be delivered to the purchaser, there will of course be no schedule nor attested copies requisite, and these words may consequently be omitted; as they may also where there is a covenant inserted for producing and delivering attested copies of the scheduled deeds.

Purchaser not
 entitled to
 copies of deeds
 of record.

(29) Deeds of record and of which a purchaser is not entitled to copies, see *Campbell v. Campbell*, cited Sugd. Vend. and Pur. 389, are such as are enrolled in a Court of Record by the authority of the legislature. A bargain and sale, therefore, enrolled at Westminster to accompany a private conveyance, although placed on record, is considered only as a private contract between the parties, and not a deed of record, see *Gilb. Us. 107*. Wills, although proved and entered in the Ecclesiastical Court, are not of record, that Court not being a Court of Record, but see more particularly *ante*, INTRODUCTION.

Habendum and
 Tenendum.

(30) The office of the *habendum* in a deed is to explain, limit, and declare the quantum of estate intended to pass, and it may carry the estate beyond the time limited in the premises

hereditaments, and all and singular other the pre-
 mises (31) hereinbefore, and in the said indenture
 of bargain and sale described, and hereby granted,
 and released, or otherwise assured or men-
 tioned (32), or intended so to be, with their and

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Release.

or granting part of the deed, but cannot abridge it, *Randall v. Miehfield*, Barn. Ch. Rep. 46; and see on the construction of the habendum in deeds, 2 Sand. Us. and Tr. p. 255, n. 1. The *Habendum* and *Tenendum*, when made to correspond with the premises, or granting part of the deed, as they ought, have neither of them now any forcible nor indeed any useful operation; for a grant "to a man and his heirs" is fully sufficient, without more, to give him the fee, and see *Shep. Touch.* 76. 4 *Elem. Conv.* 403. 410; although it was formerly otherwise with respect to the *Tenendum*, 2 *Blac. Com.* 299; which before the statute of *quia emptores*, 12 Car. II. c. 24, was used to specify of whom, and by what tenure or services the land was to be holden, *Co. Litt.* 6 *a*; but that statute having reduced all tenures into those of free and common socage, the fee became holden of the chief lord; and the *Tenendum* being no longer of any use, it was generally omitted, see *Shep. Touch.* 53. n. 1. 79, it is now, however, not only revived in practice, but has superseded the habendum itself, and is used to specify the quantity of estate or interest which is intended to be granted, for whose use, and for what purpose, and subject to what (if any) restrictions, which are seldom expressed in the grant itself.

(31) The word "premises" is frequently used indiscriminately in any part of the deed, to denote the subject of the grant, *Shep. Touch.* c. 5; but as it is confined, in its proper and technical meaning, to those things only which have been previously granted or described, it being a corrupt abbreviation of the Latin word *præmentionata*, see *Co. Litt.* 6 *a*. *Skin.* 532, and cases there cited: also *Doe dem. Biddulph v. Meakin*, 1 *East. Rep.* 456, this is the earliest place where it can be introduced with strict propriety.

"Premises" strictly refers to the preceding part of the deed.

(32) "Mentioned or intended" is the phraseology generally found in the printed books, but *quære* whether it is not better that the word "mentioned" should be omitted, as certain parcels

"Mentioned" should be omitted.

PURCHASES. every of their respective rights, members, append-
Release. ages, and appurtenances, unto the said (*purchaser*) and his heirs, to and for the use (33)
 and behoof of him the said (*purchaser*), his heirs
 and assigns for ever (34). AND the said (*vendor*)

Covenant by the
 vendor that he
 is seised in fee.

or appurtenances mentioned in the granting part of the deed may have been inserted or omitted to have been excepted by mistake, and see *Taylor v. Beversham*, 2 Ch. Ca. 194, where this word occasioned a doubt as to whether a small piece of ground comprehended in the description of the parcels, but not intended to be conveyed, was or was not carried to the grantee by the habendum, and see also *Coker v. Farewell*, 2 P. Wms. 563, and *Herring v. Yoe*, 1 Atk. 290.

It should be
 mentioned to
 whose use the
 grant is made.

(33) Care should be taken in every grant to express to or for whose use the premises are intended to be holden, as without this and there should happen to be no or no sufficient consideration for the grant, they would in many cases be holden for the use of the grantor himself, for whom the grantee would be deemed a trustee. See 4 Elem. Conv. *title*, "DEEDS." 1 Sand. Us. and Tr. 56. Gilb. on Uses, 89, 90. 2 Prest. Conv. 486.

"Heirs" suffi-
 cient to pass a
 fee without
 more.

(34) A limitation to the purchaser "and his heirs," is alone fully sufficient to give him the whole fee; see *ante*, n. (30); the words "and assigns for ever" are therefore used only by way of *emphasis*; the word "devisees" has by some modern practitioners been introduced with the words "heirs and assigns," and although there may appear to be something of propriety in this, particularly in the covenants for the title, as a *devisee* does not strictly come within the ordinary import of the word *assigns*, and therefore may seem not to be comprehended within the words of a covenant in which the "heirs and assigns" only of the covenantee are named; yet as a devise of land is as much in the nature of a *deed* as of a testamentary disposition, 2 Blac. Com. 378, and the word *assigns* therefore not inapplicable to the character of a devisee, it seems unnecessary to depart from the hitherto accustomed language; and see *How v. Whitfield*, 1 Ventr. 338, and *Roe dem. Bamford v. Hayley*, 12 East, 464, where it was determined that a covenant with a man, his heirs and assigns, imports a covenant with his representatives in

for himself, his heirs, executors, and administrators, **PURCHASERS.**
 and for every of them, doth hereby covenant (35),
 grant, agree, and declare with and to the said Release.
 (*purchaser*) (36), his heirs and assigns (37), and

general, and therefore extends to his devisee ; and see *Kingdon v. Nettle*, 4 Maul. and Sel. 53.

(35) It is very essential that a purchaser should take covenants for the title, particularly that for quiet enjoyment, as should he be evicted for defect of title he might otherwise be without any remedy either at law or in equity, see *Boswell v. Vaughan*, Cro. Jac. 196. *Lysney v. Selby*, 2 Lord Raymond, 1118. *Bree v. Holbeck*, 2 Dougl. 654. *Goodtitle dem. Morris v. Morgan*, 1 Durnf. and E. 755. *Cripps v. Read*, 6 ibid. 606. *Browning v. Wright*, 2 Bos. and Pul. 19. *Johnson v. Johnson*, 3 Bos. and Pul. 162. *Maynard's Ca.* 2 Freem. 2. *Anon.* 2 ibid. 106 ; and see Co. Litt. 384 *a*, n. (1). ult. sec. ; but by means of these covenants he may have an action on the case, &c. according to circumstances, see ibid. and vid. also Sug. Vend. and Pur. 215. *Howell v. Richards*, 11 East, 633.

Purchaser
should take
covenants for
the title.

(36) Covenants for the title must be made with the person having the legal seisin, and where the deed is by indenture, must be with some person who is named party to the deed, 2 Roll. Ab. 22. Co. Litt. 231, because every agreement (and a covenant is such) must be the act and assent of all contracting parties. This, however, is not necessary where the deed is poll, 3 Lev. 139, 140, because in that case the tenor of the covenant being, by the form of the deed, with "all to whom the deed shall come or may concern," every person named in the covenant thereby becomes interested in the subject of the deed, and is therefore by necessary implication to be considered a party to it.

Covenants must
be entered into
with a party to
the deed if it be
by indenture.

(37) If the grantee be evicted and die, his executors, and not his heirs, will be entitled to an action under the covenants for the title, for in such case the grantee is neither heir nor assignee of the land, *Lucy v. Levington*, 2 Lev. 26. 1 Ventr. 175, S. C. 2 Leon. 26 ; hence, it might seem, that the covenants for the title should be with the "executors and administrators" as well as the "heirs and assigns" of the purchaser ; but the executors and administrators will, in right of their testator or intestate,

"Heirs and
assigns."

PURCHASES. with and to each and every of them, in the manner following (that is to say) that for and notwithstanding (38) any act, deed, matter, or thing whatsoever, at any time heretofore made, done,

Release.

be equally entitled to this action without being named, and the naming them has a tendency to confound the language adapted to estates of inheritance with that which more properly belongs to chattel interests.

“Assigns” not necessary to create a fee, but proper in covenants for the title.

And as all the usual covenants for the title, together with those for quiet enjoyment and further assurance, are real covenants, and run with the land, *Middlemore v. Goodall*, 1 Roll. Ab. 521. *Derisley v. Custance*, 4 Durnf. and E. 75. *Spencer v. Boyes*, 4 Ves. 370; and consequently give to the legal owner for the time being, (and also to the *cestui que* use under 32 Hen. VIII. c. 34), the benefit of them, no detriment could arise to the purchaser if the word “heirs” also were omitted, or the word “assigns,” where there subsists a privity of estate between him and the vendor, see *Webb v. Russell*, 3 Durnf. and E. 393. *Stokes v. Russell*, *ibid.* 678. 1 Hen. Blac. 562, S. C. in error per nom. *Russell v. Stokes*.

Difference between qualified and unqualified covenants.

(38) The difference between qualified and unqualified covenants is that by those which are qualified, they are restricted to the acts of the vendor himself and those claiming under him or his ancestors; but by general and unqualified covenants (frequently styled warranting covenants) they are extended to all persons whomsoever having a right to the lands in question, whether such title be derived from the vendor or his ancestors or not, and therefore make the covenantor liable to damages for eviction by whomsoever it may have been effected.

Separate indemnity preferable to warranting covenants in case of defect of title.

Where the vendor's title is considered to be free from defects, he cannot be required to enter into any other than qualified covenants for his title; but if the deeds are not forthcoming, or there is any slight defect in the title, he is usually required to enter into *general* or unqualified covenants. It is more usual, however, and by some thought to be in general the better way (that the defect may not appear on the face of the conveyance) to take an indemnity against any supposed defect of title, by bond or other *separate* instrument.

executed, or knowingly occasioned, omitted, or suffered, by him the said (*vendor*) or any of his ancestors (39), or any of his or their trustee or trustees, to the contrary, (except as hereinafter is excepted) he the said (*vendor*) at the time (40) of

PURCHASES.

Release.

(39) These words are proper only where the vendor is entitled to the lands by descent from his ancestors; for if he be entitled by purchase from a former vendor for valuable consideration, and took proper covenants for the title, and the title deeds if he have them, and if not, if a covenant for their production be delivered over, his covenants cannot be required to extend beyond his own acts, as the chain of covenants being then complete, the purchaser will be entitled to those entered into with his vendor, see *Browning v. Wright*, 2 Pul. and Bos. 13; where, however, he is entitled by devise, or under a *voluntary* conveyance, i. e. without having paid a valuable consideration, or if the deeds are not to be delivered to the purchaser, they should be made to extend to the person who was the last purchaser for a good or a valuable consideration, vide *Lloyd v. Griffith*, 3 Atk. 267. *Wakeman v. Duchess of Rutland*, 3 Ves. 233. 504. 8 Brown Par. Ca. 145, in which case, instead of confining the covenant to the acts of the vendor, or any of his ancestors, it should be extended to the act of the deviser or other last purchaser from whom he claims or derives his title, sed vide 3 Atk. 267. 3 Ves. 236, and see 14 Ves. 239; where the Court of Chancery seems not to require a vendor claiming otherwise than by purchase to covenant beyond the acts of his immediate predecessor, but the settled practice seems to be agreeably to the preceding remarks. And see on these points *Fearn. Posth. Works*, 110. 118. *Sugd. Vend. and Pur.* 5 Edit. 395. And where there appears to be any defect in the title, the covenant should extend generally to all persons lawfully claiming a title to the estate, whether from the vendor or his ancestors, or others, see *Co. Litt.* 384, n. (1).

Purchaser only entitled to covenants for title as against the vendor's own acts or those of his ancestors.

Unless the vendor were entitled by a devise or voluntary conveyance, in which case they should be extended.

(40) As the release will be inoperative as such, unless the vendor was seised of the land *at the time of executing the bargain and sale* for a year, which is dated and supposed to have been made on the day *preceding* the date of the release, and as there is likewise an incongruity in the vendor's covenanting that he is,

Seisin of vendor at the time of the release.

PURCHASES.Release.

the sealing and delivery of the bargain and sale hereinbefore referred to, and (save only and except so far as regards the operation of the same bargain and sale) now is lawfully, rightfully, and absolutely seised (41), in his demesne as of fee in his own right, and to his own use, of all and singular the messuages, lands, tenements, hereditaments, and premises hereinbefore granted and released, or otherwise assured, or mentioned or intended so to be, and every part thereof, both at law and in equity, as of or for a good, clear, perfect, absolute, and indefeasible estate of inheritance, in fee simple,

at the time of the sealing and delivering of the release, seised in fee of the lands to his *own use in possession*, when both the use and possession must necessarily be supposed to have been previously transferred to the purchaser, I have for *propriety sake merely*, and that the form of the conveyance may accord with the principles upon which it is founded, ventured to deviate a little from the accustomed mode of wording this covenant; but, as in *practice* the bargain and sale is always executed at the *instant* preceding the execution of the release, and the vendor consequently cannot, unless by very remote possibility, be supposed to have affected this seisin between the execution of the one and the other, those words are not to be deemed *essential*, but may be retained or omitted at the election of the practitioner.

Covenant that vendor is seised in fee, and has right to convey, synonymous.

(41) This covenant by the vendor that he is seised of an indefeasible estate of inheritance in fee-simple in possession, is in effect synonymous with that which next follows, of his having a right to convey such estate to the purchaser; as such seisin, by conferring upon him an absolute ownership in the premises, gives him a right to convey them to another, and see *Nervin v. Munns*, 3 Lev. 46, and *Browning v. Wright*, 2 Bos. and Pul. 13, *Howell v. Richards*, 11 East. 642: this covenant is therefore sometimes omitted, and that of the vendor having a right to convey only retained, as being applicable to the most usual circumstances of the vendor's title. See the drafts of the late Mr. Watkins.

in possession, and in severalty, without the said **PURCHASERS.**
 estates or premises being subject or liable to any Release.
 manner of trust (42), condition, proviso, power of
 revocation, or of limiting, directing, or declaring
 any new or other use or uses, or other power,
 qualification, restriction, matter or thing what-
 soever, expressed or implied, which can or may
 alter, determine, revoke, abridge, qualify, charge,
 incumber, or prejudicially affect the same, or any
 part thereof, in any manner howsoever, (leases (43)
 or agreements for leases of which counterparts
 have been produced unto the said (*purchaser*) his
 counsel, or solicitor, at or before the sealing and
 delivery of these presents, and the land, and

(42) If the vendor be "lawfully and rightfully seised of the premises in his demesne as of fee, in his own right and to his own use, both at law and in equity, for a clear, perfect, absolute, and indefeasible estate of inheritance in fee-simple, in possession and in severalty," it is impossible that his estate can be subject to any condition, or other defeasible quality enumerated in the text; the latter part of this covenant may, therefore, in all cases be omitted as wholly unnecessary and superabundant, after allowing every due weight to the judicious observations of Lord Alvanley, in *Hesse v. Stevens*, respecting the propriety of adhering to the accustomed form of deeds, see *post*, No. XVI. n. (1), and of inserting, *ex abundante cautela*, whatever by any possibility may prove of benefit to the purchaser's title.

"Without any manner of trust."

(43) As neither leases nor the land or sewers tax can be considered as affecting the *title* of the vendor, however detrimental they may be to the value of the inheritance, this exception, although found in drafts prepared by most eminent modern conveyancers, appears to be here irrelevant: if it be thought proper to introduce it any where, the most proper place for its reception would seem to be when allusion is made to incumbrances at the end of the covenant for quiet enjoyment. See *post*, p. 147, n. (51).

Leases no objection to the title.

PURCHASES. sewers tax chargeable upon the said premises (if any) only excepted). AND that he the said (*vendor*) and his heirs, shall and will continue so seised (44) thereof as aforesaid, (except only so far as such seisin is or may be affected by these presents) until the said hereditaments and premises shall be fully and absolutely vested in the said (*purchaser*) his heirs or assigns, as of or for a like estate. And also (45), that for and notwithstanding (46) any such act, deed, matter, or

Release.

And will continue so seised until a like estate is vested in the purchaser.

And that he has a right to convey in the manner aforesaid.

Continue seised. (44) This covenant is inserted as a precaution against the bargain and sale for a year not being executed (which has often happened) or any other defect in the conveyance which the vendor or his heirs might be disposed to take advantage of—and see Lit. 536. Shep. Prec. Prec. 113. 1 Bridg. Conv. 20, 265. 2 *ibid.* 38. It cannot, however, be considered to be essential, as the consideration would raise a trust in the vendor for the purchaser, and see *ante*, p. 131, n. (20).

Right to convey. (45) This covenant that the vendor has a right to convey, is synonymous with the preceding, that he is seised in fee, and either this or that may, therefore, at the election of the student, be omitted where brevity is particularly desirable, see *ante*, n. (41).

The qualifying words of “for and notwithstanding,” &c. preceding the vendor’s covenant of seisin, extend to this covenant.

(46) Where covenants have distinct objects, restrictive words prefacing the first of them will not be applied to the others; but where they constitute a connected string of covenants intended to effect the same object, the qualification annexed to the first will extend to them all, see *Gainsford v. Griffith*, 1 Saund. 58. *Browning v. Wright*, 2 Bos. & Pul. 13. Hence it appears now to be pretty generally acceded to, that the qualifying or restrictive words of “for and notwithstanding, &c.” used in the introduction to the preceding covenant by the vendor that he is “seised in fee,” extends also to the covenant that he has a right to convey, *Nervin v. Munns*, 3 Lev. 46. *Browning v. Wright*, 2 Bos. & Pul. 13. *Hope v. Stevenson*, 3 *ibid.* 574. *Havill v. Richards*, 11 East. 642. Yet as the contrary has been held in many prior cases, see notes to *Gainsford v. Griffith*, 1 Saund.

thing as aforesaid, he the said (*vendor*) now hath in himself, and in his own right, full power, and lawful and absolute title and authority, to grant, bargain, sell, release, and confirm all and singular the same hereditaments and premises, and the possession, reversion, and inheritance thereof, unto and to and for the use and behoof of the said (*purchaser*) his heirs and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents. AND further (47), that he the said (*purchaser*) his heirs and assigns, shall or lawfully may (48), immediately upon the sealing

PURCHASES.

Release.

Covenant for the purchaser's quiet enjoyment.

Rep. 59, also 2 Keb. 201. 213, 1 Sid. 328. Crayford v. Crayford, Cro. Car. 106, Hughes v. Bennet, *ibid.* 45, and as almost all the old cases, and some of the modern ones on this subject, are decided upon distinctions so nice and technical, that it is very difficult, if not impracticable, to deduce from them any certain rule or principle by which it can be ascertained what covenants are independent, and what dependent, see Pordage v. Cole, 1 Saund. Rep. 319. also Kingston v. Preston, cited in Jones v. Barclay, Dougl. 689; it is considered prudent to insert these words before each of the covenants to which they are intended to apply. And where the covenants introduced subsequently to such restrictive words are of a different nature or purport from those to which they are annexed, a repetition of these qualifying words will be absolutely requisite, as they will in no case extend to covenants relative to a subject totally dissimilar from or unconnected with that to which they are prefixed. See Nervin v. Munns, 3 Lev. 46. Crayford v. Crayford, Cro. Car. 106. Hughes v. Bennet, *ibid.* 495. Howell v. Richards, 11 East, 633.

(47) The qualifying words mentioned in the last note are unnecessary to precede this covenant for quiet enjoyment, as a similar qualification is in the concluding part of the covenant.

Omission of qualifying words in covenant for quiet enjoyment.

(48) This covenant for quiet enjoyment gives the purchaser a right to have his purchase money returned if evicted; but he cannot recover more than the sum paid, although the premises

Covenant for quiet enjoyment gives purchaser a right

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Release.

Free from incumbrances.

the said (*purchaser*) his counsel or solicitor, at or before the sealing and delivery of these presents). And that (53) free and clear, and clearly and absolutely discharged and exonerated, or otherwise, by and at the expense of the said (*vendor*) his heirs, executors, or administrators, effectually defended, protected, and indemnified, from and against (54) all former and other feoffments, gifts, grants, bargains and sales, contracts, releases, leases, devises, wills, conveyances and assurances whatsoever; and all and all manner of uses, trusts, entails, limitations, settlements, remainders or re-

entitled to the benefit of all covenants entered into by the lessee with the lessor; and see Sugd. Vend. & Pur. 221.

And "that,"
&c.

(53) This word is by many considered as having crept into the covenant by accident, but it is found in most of the earliest forms to be met with, see West. Symb.; Conv. Light; Perf. Conv.; Bridg., &c. and appears to be used *emphatically*, implying that the purchaser shall enjoy the lands, not only without any hindrance, disturbance, or interruption, &c. but also free from all charges and incumbrances whatsoever, whether those charges or incumbrances are calculated to produce any such hindrance, disturbance, or interruption, or not.

Free from incumbrances.

(54) The preceding covenant that the purchaser shall enjoy without any disturbance or claim of the vendor, or of any person claiming under him, might seem to render this addition that such enjoyment shall be free from incumbrances, unnecessary, as any incumbrance, if a claim be founded upon it, will be a breach of the covenant for quiet enjoyment; but as an incumbrance, although no claim be made, is a defect in the title, and will render the estate unmarketable, the grantee appears to have a right to this extension of the covenant, and more particularly as a purchaser has no remedy at law against the vendor on account of any incumbrance or defect of title to which his covenants do not extend.

versions in the crown (55), or elsewhere, con- PURCHASES.
 ditions, mortgages, judgments (56), decrees (57),

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(55) Remainders and reversions in the crown are always particularly mentioned, because they cannot be barred, see 34 and 35 Hen. 8. c. 20. Co. Lit. 372. b. A recovery suffered by the tenant in tail will, however, operate so far as to convert the estate tail into a base or determinable fee, and bar the issue, *Neale v. Wilding*, 1 Wils. 275. unless the entail be created by the crown for services performed, in which case the issue in tail is protected from the bar of their ancestor, 32 Hen. 8. c. 36. s. 4. Co. Lit. 372; it will also bar all remainders in strangers, whether prior or subsequent to the estate of the crown, Serjeant's Ca. 2 Roll. Ab. 393. For the only estate protected by the statute from the operation of the recovery, is the reversion or remainder in the crown itself, *Keb.* 339. and that protection subsists so long only as the estate continues in the crown; the moment the crown parts with it, the protection ceases, Co. Lit. 372. b. *Chesterfield's Ca.* Hard. 409. and this reversion is then barrable like any other, and see *Mitford v. Elliott*, 1 Moore, 434.

Reversions in the crown not barrable by recovery.

(56) By the 29 Car. 2. c. 3. s. 15. judgments are binding as against purchasers even for a valuable consideration from the time of signing; and by 4 and 5 Will. and Mary, c. 20. made perpetual by 7 Will. 3. c. 16. when doggeted in the manner prescribed by the act; but if the lands are situated in Middlesex or Yorkshire, not until they have been duly memorialized or registered.

Judgments bind the land.

(57) Although a decree is not a lien upon a legal interest, yet it is equally a lien upon an equitable estate, as a judgment at law is upon a legal one, see 1 Ves. 214, 9 Ves. jun. 125, and *Perry v. Phillips*, 10 *ibid.* 34; yet a decree for a debt does not bind the real assets descending to the heir on the death of the party, as a judgment does, unless the decree proceed to a sequestration for contempt; and even such sequestration in most cases abates by the death of the party, whilst an extent does not, see *Bligh v. Darnley*, 2 P. Wms. 620. and see *Crooke v. Hawkins*, 2 Atk. 594. and also *post*, p. 150, n. (60).

Decree an equitable lien.

PURCHASES. statutes (58), recognizances (59), extents, executions, elegits, sequestrations (60), debts of re-

Release.

Statutes a lien upon land in the possession of the cognizor, at the time of acknowledgment.

(58) Statutes are obligations of record, (and are so called because made in pursuance of, and according to, the form of some statute expressly and particularly provided;) of these there are two sorts, viz. Statutes Merchant, and Statutes Staple, the one a bond or obligation under the seal of the obligor, entered into before the chief magistrate of a trading town, pursuant to the statute of 13 Ed. 1. stat. 3. *de mercatoribus*, and thence called a Statute *Merchant*; the other, pursuant to 27 Ed. 3. c. 9. acknowledged before the mayor, and sealed with the seal of the staple, or grand mart for the manufactures of the kingdom, formerly held in certain towns, whence it is called a Statute *Staple*. They are both securities for debts acknowledged to be due, and by them not only the body of the debtor may be imprisoned, and his goods seized in satisfaction of the debt, but also his lands delivered to the creditor, till out of the rents and profits his debt is satisfied. These statutes are a charge upon all lands in the possession of the cognizor at the time of acknowledgment; they are, however, grown into disuse, and are now very seldom met with except in abstracts deducing titles from a very remote period.

A recognizance binding from time of enrolment.

(59) A recognizance is an obligation of record, which a man enters into before some court of record, or magistrate duly authorized, with a condition to do some particular act, as to appear at the assizes, to keep the peace, to pay a debt, or the like. It is in the nature of a judgment of the court before which it is entered into, and binds the lands in the possession of the cognizor at the time of its acknowledgment; but by 29 Car. 2. c. 3. it is binding upon lands in the possession of *bonâ fide* purchasers for a valuable consideration only from the time of its enrolment.

Sequestration affects the rents and profits of land.

(60) A sequestration, in the acceptation in which it is used in the text, is a commission issuing out of the Court of Chancery, empowering certain persons therein named to seize the defendant's real and personal estate, and sequester or receive the rents and profits until he shall have complied with the decree of the court. It is similar to the *levari facias* at common law, and affects the rents and profits of the real estate as well

cord (61), debts due to the king (62), or any of his predecessors, legacies (63), portions, annuities, quit and other rents, estate right and title of or to dower, forfeitures, entries, and all and singular other estates, rights, titles, interests, charges, and incumbrances whatsoever, (other than the estates, interests, and charges hereinbefore excepted) which at any time or times heretofore have been, or hereafter shall or may be made, created, executed, committed, or knowingly occasioned, or suffered by the said (*vendor*) his heirs or ancestors, or any person or persons (64) now or hereafter

PURCHASES.

Release.

as personalty, but not the land itself, *Hyde v. Greenhill*, 1 Dick. 107. and is binding from the time of awarding the commission, and not merely from the time of its execution, *Burdett v. Rockey*, 1 Vern. 58.

(61) Debts of record are debts due on judgments, statutes merchant or staple, and recognizances, and are so called because the contracts upon which they are founded and appear to be due, are witnessed by the highest kind of evidence, the evidence of a court of record, see 2 Blac. Comm. 465. Debts of record.

(62) Debts due to the king have priority to all others, even though subsequently contracted, Co. Lit. 131. b. and are by the common law a lien upon the real property of the debtor, per Heath, J. in *Wilde v. Fort*, 4 Taunt. 342. and see *Candish's case*, cited Plow. Comm. 321. Simple contract debts due to the crown will not, however, bind the land in the possession of a purchaser for a valuable consideration without notice, see the *King v. Smith*, Wightw. 34; unless the debtor be an officer of the crown, see 13 Eliz. c. 2. See further as to crown debts, *ante*, INTRODUCTION. Debts due to the king have priority, although subsequently contracted.

(63) Legacies are not in all cases a lien upon real estate, but only so when it is expressly charged by the testator with the payment of them. Legacies.

(64) As the covenant for quiet enjoyment is not like the preceding covenants introduced by the qualifying words "for and notwithstanding, &c." restraining it to the acts of the

PURCHASES.*Release.*

rightfully claiming, or possessing any estate, right, title, or interest, at law or in equity, from, through (65), under or in trust for him, them, or any of them, or by, through, or with his, their, or any or either of their procurement, consent, or privity, or acts, means, or defaults (66); (such leases, or agreements for leases, as aforesaid, and the land and sewers tax to become due for and in respect of the same premises, or any of them, from the day of last past only excepted); and particularly of and from, &c. (67). AND further

vendor himself, and predecessors in title, it becomes proper, and is usual, to subjoin to this covenant words of a like qualifying import, and see *Howell v. Richards*, 11 East. 633.

"Through or under."

(65) A person deriving title under a deed of revocation of old, and appointment of new uses, has been held to be a person claiming by or through the appointor, *Hurd v. Fletcher*, 1 Dougl. 43. and *vide* *Butler v. Swinnerton*, Palm. 339. Cro. Jac. 657. S. C., these words, therefore, cannot be too general.

"Acts, means, or defaults," are proper to be inserted in covenants for the title.

(66) It seems not to be sufficient that the vendor's covenant for quiet enjoyment should extend only to incumbrances occasioned by the vendor, and "those claiming under or in trust for him," as he may be a joint-tenant or the like, in which case his co-tenant may evict the purchaser of a moiety, without "claiming under or in trust for the vendor." See *Butler v. Swinnerton*, Cro. Jac. 657. Palm. 339. S. C. Shep. T. 171. So the wife of the vendor's father may be entitled to dower, but she does not claim from the vendor, *ib.* and Godb. 340. Hence the covenant is extended to the ancestor of the vendor, and to his and their "acts, means, and defaults," in which words both those cases, (as also the issue of a tenant in tail, although claiming from the donor), and many other similar cases, are included. See *Butler v. Swinnerton*, *ub. supra.* Godb. 333. *Hawes v. Brushfield*, 3 East, 491. where a quit rent in arrear at the time the vendor sold, was held to be comprehended under the word "default," and see *Lady Cavan v. Pulteney*, 2 Ves. jun. 544.

Covenants should extend to defects, if any.

(67) Where the estate is subject to any known incumbrance or

that he (68) the said (*vendor*) and his heirs, and all and every person and persons now or at any time hereafter lawfully, equitably, and rightfully claiming or possessing any estate, right, title, or interest, at law or in equity, in, to, out of, upon, or respecting the hereditaments and premises hereby granted, released, and confirmed, or mentioned or intended so to be, or any part thereof, from, through, under, or in trust for him, them, or any or either of them, or any of the ancestors of the said (*vendor*) (other than any person or persons claiming or entitled under or by virtue of such leases or agreements for leases as aforesaid, so far

PURCHASES.

Release.

Covenant for further assurance.

defect of title, and the purchaser is willing to rely for his security upon the vendor's covenants, they should be made to extend expressly to such defect or incumbrance, lest it should be construed that the defect being known to him, he must be presumed to have taken the estate subject to all claims and charges attending it, see Co. Lit. 384. n. (1).

(68) The covenant for further assurance gives a right to a specific performance of the acts requisite to be done for perfecting the performance, *Edwards v. Applebee*, cited 2 Brow. Ch. Ca. 652; or to damages for non-performance, at the option of the party entitled to require it, unless by reason of its being contained in a deed wholly void (as a fraudulent deed, an annuity deed not memorialized, or the like). See *Fursaker v. Robinson*, Prec. Ch. 475. Gilb. Eq. Rep. 139. S. C., but a covenant for further assurance will not be aided in equity, unless the justice of the case require it, nor, therefore, if the premises are sold much at an under value, or the like, see *Johnson v. Nott*, 1 Vern. 271.—This covenant runs with the land equally with those for the title, and consequently will be binding upon the assignees of the vendor, should he become bankrupt, *Pye v. Daubuz*, 3 Brow. Ch. Ca. 395.

Effect of covenant for further assurance.

PURCHASES. as respects their several estates or interests under or by virtue of the same) shall and will from time to time (69), and at all times hereafter (70), upon every reasonable request (71), and at the expense and costs of the said (*purchaser*) (72), his heirs or assigns, make, do, acknowledge, levy, suffer, execute, and perfect, or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected, with all due expedition, all and every such further and other lawful and reasonable acts, deeds, conveyances, (with usual

Further assurance once executed, a satisfaction of the covenant.

(69) It has been held, that when a person has once executed such further assurance as the counsel for the party requiring it advised, he is discharged from his covenant, although such assurance turn out to be insufficient for the purpose intended, see 5 Co. 23. 3 Mod. 191, 192. 1 Co. 173, 174. Vaugh. 34, hence the words "from time to time" seem material.

Covenant for further assurance sometimes limited to a given period.

(70) According to Mr. Bradley, a vendor's covenant for further assurance should be not unlimited in point of time except where it is confined to himself, and those claiming under him; but that where he covenants for his ancestors also, the covenant should be confined to ten years, see Brad. Points, p. 25, a distinction which seems to have some reason in it, and a limitation of time for further assurance was accordingly formerly very common, but the modern practice is otherwise.

"At request."

(71) If the vendor do any act by which he is disabled to execute further assurance, this covenant will be broken although no request be made, Moore, 453. 755. Poph. 109. Cro. Eliz. 450. 479. 5 Co. 20. because as such request would in that case be nugatory, it becomes unnecessary, and although he afterwards restore his ability, it will not help him, Lit. Conv. 59. 5 Co. 20.

Further assurance must be at purchaser's expense.

(72) Although it be not stipulated at whose expense further assurance shall be made, yet if it be requisite to aid the purchaser's title, it must be at his expense, 1 Bulst. 90. as he might have required it before, and see *post*, p. 156, n. (77).

and other proper covenants (73)), assurances, matters, and things whatsoever, be the same by fine or fines (74), with or without proclamations, common recovery or recoveries, deed or deeds enrolled or not enrolled, or the enrollment of these presents, feoffment, release, confirmation, declaration or limitation of or to any use or uses, or other assurance or assurances, of record or not of record, or by any counterpart or duplicate of these presents (75), for the further, better, more perfectly, fully, and absolutely, or satisfactorily granting, releasing, conveying, confirming, and assuring the same hereditaments and premises, and every or any part or parcel thereof, and the possession, reversion, and inheritance of the same, with their

PURCHASES.

Release.

(73) As the purport and intent of a further assurance is, the doing all such further acts as may be necessary for the more effectually *conveying* the premises to the purchaser, and as no *covenant* can have this operation, but only provide a collateral satisfaction by way of recompense in case the conveyance should prove defective, it is said that the vendor is not obliged to execute any deed of further assurance with covenants, see *Lassels v. Catterton*, 1 Sid. 467. 1 Mod. 67. S. C. 2 Keb. 685. S. C.; and although authorities have been sometimes adduced to prove a contrary position, yet they upon examination will, it is apprehended, be found to relate to primary conveyances only.

Covenants cannot be required in deeds of further assurance.

(74) A covenant to do all lawful and reasonable acts for further assurances, includes the levying a fine, although not mentioned, and also the satisfying judgments, *King v. Jones*, 5 Taunt. 418. 1 Marsh, 107. S. C. affirmed in K. B. 4 Maul. and Sel. 418.

Fine, &c. included, although not mentioned.

(75) This specification of particular modes of assurance seems to be unnecessary, as they are substantially comprised in the aggregate words immediately preceding them, and are here retained merely out of respect to common usage; they may therefore be omitted where conciseness is desirable.

"Whether by fine," &c.

PURCHASES. and every of their rights, members, appendages,

Release.

and appurtenances, unto and to and for the use
and behoof of the said (*purchaser*) his heirs and
assigns, or otherwise as he or they or his or their
counsel in the law (76), (being of the degree of a
barrister) (77), shall advise and require, and pre-
pare and tender, if the nature thereof permit, for
his or their execution, free and clear of and from
all and all manner of charges, liens, and incum-
brances whatsoever, according to the true intent
and meaning of these presents; so nevertheless (78)

Purchaser's
counsel to name
the assurance.

(76) It of course belongs to the purchaser's counsel to name the assurance he deems requisite for his further security, and it has been so holden, see Lutw. 126; unless he be himself a counsel, in which case it is said that the advice must proceed from some other counsel, Cro. Eliz. 297. 5 Co. 196; but as the vendor is bound to execute such assurance as may *reasonably* be required, and no other, be it proposed by whom it may, this distinction seems groundless, and see 1 Roll. Ab.

"Degree of a
barrister."

(77) After the vendor has executed to the purchaser such conveyances, &c. as have been required of him, it does not seem reasonable that he should be liable to be again called upon to do further acts to perfect the title, unless it should be thought requisite by one, who from his degree and standing in the profession, may reasonably be deemed competent to judge of its expediency.

"So that," &c.

(78) This qualification, confining the operation of further assurances to the acts, &c. of the vendor, his ancestors, or representatives, the exclusion of a warranty, and the stipulation which immediately follows, that the person required to execute any such assurance shall not be obliged to leave his abode for that purpose, might, it should seem, be omitted without prejudicing the purchaser's title or possession; as any assurance containing more extensive covenants than those here mentioned, or requiring the vendor or his heirs to leave his place of abode, would be deemed unreasonable, and not therefore within the terms of the covenant; but as the stipulation that he shall not

that such further assurance or assurances, or any of them, do not contain or imply any further or other warranty (79) or more general covenants by or on the part of the person or persons who shall be required to make or execute the same, than for or against the acts, deeds, omissions, or defaults of him, her, or them, and of his, her, or their ancestors, heirs, executors, or administrators, and so that he, she, or they, be not obliged to go from his, her, or their then place or respective places of abode, for making or executing the same, without a reasonable and sufficient sum being previously paid, tendered, or secured to him, her, or them, for or in respect of his, her, or their time, trouble, and expenses. And (80) it is hereby declared and agreed by and between the said parties to these presents, that all such further assurances shall, unless therein otherwise expressed, be and enure in corroboration and confirmation of these

PURCHASES.

Release.

be obliged to do this, "without being paid his expenses," implies an agreement that he shall be compellable upon such expenses being tendered him, there appears to be a utility in the clause being retained with such addition, and see *Lassels v. Catterton*, 1 Sid. 467. 1 Mod. 67. 2 Keb. 685. S. C. *Freeborne v. Pincras*, Allen 68. *E. Clanrickard's case*, Hob. 273. Sir T. Raym. 190. S. C. 2 Lev. 140, 141. It is seldom, however, I perceive, inserted.

"On payment of expenses."

(79) As the vendor is not bound to assure by warranty, 1 Mod. 67. 2 Lev. 140, 141. this saving clause added to the covenant is not necessary for his protection.

Vendor not bound to warrant.

(80) These words are not often met with in modern drafts, but they seem to be proper for the purpose of leading the uses of any fine, &c. which may be levied for further assurance, without being accompanied by any declaration of uses, and see *Shep. Prec. Prec.* 120.

Further assurances to be in corroboration of the conveyance.

PURCHASES. presents, and of the estate and interest hereby,

Release.

 or mentioned or intended to be hereby granted or
 conveyed. IN WITNESS whereof, the said
 (*vendor*) hath hereunto set his hand and seal (81)
 the day and year first above written.

Signed, sealed, and delivered (82) by the said
 (*vendor*), in the presence of, &c. (83).

"Sealed and
 delivered."

(81) These words should not be omitted; for, according to
 Brook. Ab. tit. "*Faits*," pl. 76. and 21 Ed. 4. 81. pl. 30. it is no
 deed, unless it be expressed to have been sealed, **although it be**
sealed in fact—*sed quære*.

Delivery essen-
 tial to a deed.

(82) It appears to be absolutely requisite to the efficacy of a
 deed, that it be delivered, see Shep. Prec. Prec. 10. Clavering
 v. Clavering, 2 Vern. 475. Derby Canal Comp. v. Wilmot,
 9 East, 361. Blundell v. Brettall, 17 Ves. 236. unless in the
 case of a corporation, where the seal of the corporation per-
 fects the deed without livery, vide 2 Roll. Ab. 23, pl. 50.
 Willis v. Hermin, Cro. Eliz. 167, and such delivery or sealing,
 must, in order to perfect the conveyance and pass the legal
 estate, be done with a view to its having that effect; if,
 therefore, the deed be still retained in the hands of the vendor
 or his agents, until the purchase money be paid, or the like, its
 operation will be suspended until it be delivered over to the
 purchaser. Dav. Rep. 44. Derby Canal Comp. v. Wilmot, 9
 East. 361. Co. Lit. 36. It is also necessary that the deed should
 be *sealed*, which seems sufficient without any other subscription,
 Cromwell v. Grundsden, 2 Salk. 462. and vide Lemayne v.
 Stanley, 3 Lev. 1. Warneford v. Warneford, 2 Stra. 764; and
 Shep. Prec. Prec. 8. Sed qu. and vide 29 Car. 2. c. 3. and 2
 Blac. Com. 306, who holds *signing* also to be requisite; but it
 has lately been holden, that if the deed be sealed and delivered
 it is to be considered as valid and perfect, although not signed,
 Wright v. Waterford, 17 Ves. 459.

Unless in case of
 a corporation.

Sealing neces-
 sary to consti-
 tute a deed.

Attestation of
 witnesses to the
 execution of a
 deed not essen-
 tial.

(83) It is proper that the execution of a deed (except by a
 body corporate) should be attested by subscribing witnesses
 for the sake of the more easy proof of the execution; but it is
 not essential to the validity of the deed; as proof of the hand
 writing of the party, where there is no such attestation, will

establish it, see *Garret v. Lister*, 1 Lev. 25. and 10 Ves. jun. 474. Where, however, the execution is so attested, it must be proved by at least one of the subscribing witnesses, unless the deed be of ancient date, *Thompson v. Miles*, 1 Esp. Rep. 185, or they be abroad, *Prince v. Blackburn*, 2 East. 250. *Carrington v. Payne*, 5 Ves. jun. 404, or cannot be found, *Cunliffe v. Sefton*, 2 East. 183, for it will not be permitted to be acknowledged by the party himself, *Abbot v. Plumbe*, Dougl. 215; *Johnson v. Mason*, 1 Esp. Rep. 89. *Manners v. Postan*, 4 ib. 239. *Barnes v. Trompowskey*, 7 Durnf. and E. 265. *Adams et ux. v. Kerr*, 1 Bos. and Pul. 360. *Prince v. Blackburn*, 2 East. 250. *Cunliffe v. Sefton*, 2 ib. 183. *Phillips v. Carter*, 1 Campb. 412, and cases cited *ibid.* 414. note, (*sed contra*, *Fitzgerald v. Elsee*, 2 *ibid.* 635. and 636. note. *Fasset v. Browne*, Peak. 23. *Grellier v. Neal*, *ibid.* 147). Hence such witnesses only whose evidence is likely to be easily obtained should be admitted to attest the execution of deeds.

PURCHASES.

Release,

As all words in a legal instrument having the appearance of being afterwards written, will be presumed to be fabricated, unless some contrary evidence appear, *Davis v. Oliver*, 1 Ridg. P. C. 9, 10. 15. care should be taken to notice in the attestation all interlineations that have been made in the deed prior to its execution.

Alterations in
engrossment
to be noticed.

* * * *As to the things to be attended to by the solicitor for the vendor and purchaser respectively, on the behalf of their clients, at and after the execution of the conveyance, See the remarks at the end of No. XVI.; and also ante, INTRODUCTION.*

PURCHASES.

*Release,
Short Form.*

No. XVI.

A short Form (1) of a Conveyance by Lease and Release, from a Vendor to a Purchaser.

Variations where the sale was by public auction.

Where the estate was sold by the direction of a Court of Equity.

Where it is sold by the Deputy Remembrancer of the Court of Exchequer under a writ of extent.

Where it is sold by the original purchaser before he has taken a conveyance.

Where the consideration for the purchase is a transfer of money in the funds.

Where the consideration is paid in bills of exchange or secured by the bond of the purchaser.

Where the consideration is a debt owing by the vendor.

Where the consideration is an annuity to be paid during the life of the vendor.

Where the consideration is retained by the purchaser on account of a defect of title.

Where the title deeds are retained by the vendor.

Where the release is accompanied by a bargain and sale to be enrolled.

Where the lease for a year is included in the release.

THIS INDENTURE of _____ parts, made the
day of _____, in the year of our Lord

Conciseness not
generally to be
recommended.

(1) Every practical degree of conciseness in preparing conveyances is now very generally requested by solicitors, on behalf

BETWEEN (*the vendor*) of, &c. of the one PURCHASER.
 part (2) and (*the purchaser*) of, &c. of the other

*Release,
Short Form.*

of their clients, on account of the pressure of the stamp-duties; and so far as this object is attainable by the suppression of all synonymous words, and circumlocutory phrases, it has been attended to in the ensuing volumes; beyond which it would in most cases be dangerous to hazard any material innovation (and see observations of Lord Alvanley in *Hesse v. Stevens*, 3 Bos. and Pul. 565, also 2 Prest. Conv. 118), for independently of the stability which the present forms of assurances have acquired by long usage, it is to be observed, that the various provisions in deeds, which by many are illiberally conceived to be designed for no other purpose than to enrich the practitioner, will be found, on investigation, to be calculated to answer the more beneficial ends of furnishing the party with a remedy where he would have had either none, or a less efficacious one without them. It becomes the solicitor, therefore, to check this perpetual anxiety in his client after frugality, in matters where the common adage of penny-wisdom and pound-foolishness is perhaps peculiarly applicable, for the whole purchase money may be placed in jeopardy by the desire to prevent a trifling augmentation in the expense of the conveyance.

(2) It sometimes happens, under conditions of sale by auction, that the purchaser of a smaller lot is entitled to a covenant from the purchaser of the largest lot, for the production of title deeds delivered to him; in which case, if the covenant be not entered into by a separate instrument, make such largest purchaser a party of the third part. Deeds delivered to largest purchaser at a sale by auction.

If the contract were entered into in writing by a friend or agent of the real purchaser, or the purchaser buys of a person who had previously bought but not taken a conveyance, make such agent or prior purchaser a party of the second part, and the purchaser of the third part. Sub-purchase.

If the lands are sold under a writ of extent, by virtue of the 25th Geo. III. c. 35. make the Remembrancer, or Deputy Remembrancer, of the Court of Exchequer, a party of the first part, the debtor or owner of the estate of the second part, and the purchaser of the third part, and see the variation *post*, p. 191, marked with the letter B. Writ of extent.

PURCHASES.

Release,
Short Form.

Recitals.

part. WHEREAS (3) the said (*vendor*) is seized in his demesne as of fee by descent from his ancestors, of the several messuages, lands, tenements, and hereditaments hereinafter described. AND

Of reciting
vendor's title.

(3) If the vendor derive his title to the land by purchase from a vendor, or by devise, it will be proper to recite the purchase deed or will under which he claims, that the purchaser may be the better able to deduce his title in case of the destruction of his title deeds; see *Ford v. Grey*, 6 Mod. 44. 1 Salk. 286. 2 Dougl. 485, n.

If the title deeds be delivered up to the purchaser, the recitals may be very short, as thus:

Where title
deeds delivered
over.

"WHEREAS by indentures of lease and release, bearing date respectively, the and days of which was in the year , the release being of parts, and made or expressed to be made between, &c. the messuages, lands, and hereditaments hereinafter described, and intended to be hereby granted and released, were, for valuable considerations therein mentioned, conveyed and assured unto and to the use of the said (*purchaser*) and his heirs in fee-simple."

But if the purchaser be not entitled to the deeds, it will be proper to recite the title more fully, as in the event of any of the deeds being lost, these recitals may tend to satisfy a *willing* purchaser of the goodness of the title; recitals of title are, however, in general, merely *satisfactory*, without being at all necessary to the validity or efficacy of the conveyance, see *Shep. Prec. Prec. 2*; also *ib. 87*, except so far as they are evidence of the deeds or facts recited, against the grantor and those claiming under him, see *Roe v. Runnington*, Vaug. 74. 82. 10 Co. 92, *Deen v. Barnard*, Cowp. 596.

General rule as
to recitals.

In recitals "the general rule to be observed is to express every thing that may elucidate the title and assist in the future investigation of it, carefully avoiding all reference to any fact which may show a defect in the title, or raise a difficulty concerning it on any future occasion." 2 Prest. Conv. 77.

See the form of recitals of different species of conveyances, titles, &c. INDEX *voce* RECITALS; also *Jacob's Grand Precedent*, p. 7.

WHEREAS (4) the said (*purchaser*) hath contracted PURCHASES.

*Release,
Short Form.*

(4) This recital corresponds with the supposition, that the estate was sold by private contract; but if it were sold by public auction, say, Sale by public auction.

“AND WHEREAS the said messuages, lands, tenements, and hereditaments, were put up to sale by public auction, on the day of last past, at which sale the said (*purchaser*) became, and was declared to be, the highest bidder for, and the purchaser of the same (being lot in the printed particulars of sale thereof), at the sum of £ , and thereupon paid into the hands of the auctioneer the sum of £ , by way of deposit, and in part of the said purchase money, conformably to certain printed conditions of sale there exhibited. AND WHEREAS the said (*purchaser*) is now desirous of completing his said purchase, and of having the said lands and hereditaments conveyed to him and his heirs in fee-simple, in the manner hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that in pursuance and completion of the said purchase, and in consideration of the sum of £ , so paid by the said (*purchaser*), into the hands of the said auctioneer, at the time of the said sale, by way of deposit and in part of the said purchase money as aforesaid, and of the further sum of £ of lawful money of the united kingdom of Great Britain and Ireland, of English value and currency, being the residue and in full of the said purchase money, to the said (*vendor*) in hand well and truly paid by the said (*purchaser*), at or immediately before the sealing and delivery of these presents, the payment of which said sum of £ by way of deposit, and the receipt of which said sum of £ , being the residue of the said purchase money, making together the sum of £ , and being in full for the absolute purchase,”
&c. as above.

If the sale was before a Master in Chancery, or the Deputy Remembrancer of the Court of Exchequer, see the variation Sale by order of court.
subjoined, p. 188, marked with the letter A.

PURCHASES. with (5) the said (*vendor*) for the absolute purchase

*Release,
Short Form.*

(5) If the conveyance be in pursuance of a preliminary written agreement, it will be proper to recite such agreement, if not subsequently varied, to show that the terms or conditions of such contract have been pursued; but as every executory agreement becomes extinguished in that by which it is executed (the parties continuing *sui juris*), and till then may be varied at the pleasure of the parties, such recital can seldom be essential. Where, however, it is deemed to be proper, it may be in the following form:

Recital of
agreement for
purchase.

“ WHEREAS, by articles of agreement entered into the day of , between the said (*vendor*) of the one part, and the said (*purchaser*) of the other part, the said (*vendor*) contracted with the said (*purchaser*) for the sale to him of the inheritance in fee-simple and in possession, of the messuages, lands, tenements, and hereditaments therein and hereinafter particularly mentioned, free from incumbrances, at or for the price or sum of £ , and agreed to execute proper conveyances and assurances of the said premises unto the said (*purchaser*), his heirs, and assigns, on a day therein mentioned, being the day of the date of these presents.”

Sub purchase.

If the original purchaser has parted with his interest in the premises to a third person before a conveyance has been executed to him, after reciting the agreement for the original purchase, say,

Recital of such
purchase.

“ AND WHEREAS by articles of agreement bearing date the day of , and made between the said (*original purchaser*) of the one part, and the said (*present purchaser*) of the other part, the said (*present purchaser*) contracted with the said (*original purchaser*) for the absolute purchase of all his estate and interest in the said messuages, lands, tenements, and hereditaments, under or by virtue of the hereinbefore in part recited articles of agreement, at or for the price or sum of £ , and the said (*original purchaser*) hath requested the said (*vendor*) to convey and assure the said messuages, lands, tenements, and hereditaments unto the said (*present purchaser*), and his heirs, in the manner hereinafter expressed.”

of the messuages, lands, and hereditaments herein- **PURCHASES.**
after described, at the sum (6) of £ (7).

*Release,
Short Form.*

(6) If the consideration be a transfer of money in the funds, say,

Consideration a
transfer of
money in the
funds.

“ For the sum of £ , three per cent. consolidated bank annuities. AND WHEREAS the said (*purchaser*) hath this day transferred the said sum of £ , three per cent. consolidated bank annuities, into the name of the said (*vendor*), in the books of the Governor and Company of the Bank of England.”

If the consideration be the grant of an annuity during the life of the vendor, say,

Consideration
the grant of an
annuity.

“ For an annuity of £ , payable to him during the term of his natural life, as hereinafter is expressed.”

(7) If it has been agreed that part of the consideration money shall be retained by the purchaser on account of the minority of a necessary party to the deed or the like (which is not an unusual case), after reciting such minority or defect, say,

Part of consi-
deration money
retained.

“ AND WHEREAS it hath been agreed by and between the said (*vendor*) and the said (*purchaser*), that the sum of £ , part of the said purchase money or sum of £ , shall be retained by the said (*purchaser*), for such time and for such purposes as hereinafter are expressed.”

It has been mentioned in a preceding note, see *ante*, No. XV. p. 131, n. (20), that the more scientific mode of noticing the bargain and sale or lease for a year, would be by a distinct recital of it immediately before the witnessing part of the deed; and see the bargain and sale recited in this manner, 2 Bridg. Conv. 110. If it be noticed here, the recital may be in the following form:

Lease for a year
should be re-
cited before
witnessing part.

“ AND WHEREAS in pursuance and part performance of the said contract the said messuages, lands, tenements, and hereditaments have been vested in the said (*purchaser*) by virtue of a bargain and sale to him thereof made by the said (*vendor*) for 5s. consideration, by an indenture bearing date the day next before, and executed previously to the

Recital of lease
for a year.

PURCHASES. NOW THIS INDENTURE WITNESSETH, that in pursuance and execution of the said contract, and in

*Release,
Short Form.*

sealing and delivery of these presents, for the term of one year, commencing from the day next preceding the day of the date of the same indenture, and by force of the statute made for transferring uses into possession, for the purpose of enabling him to take a release of the reversion and inheritance thereof in the manner hereinafter expressed. Now THIS INDENTURE WITNESSETH, that in further pursuance and in completion of the said contract, and in consideration," &c. *as above.*

Lease for a year may be included in the release.

For the sake of economy in the expense, the bargain and sale for a year, and the release of the reversion, may be comprised in one and the same deed, which, although informal, will be equally effectual as the usual and more correct mode of effecting the conveyance by two separate instruments. See *Barker v. Keate*, Freem. 249. 2 Mod. 252, where North, Just., is reported to have said, that he had known it ruled several times, that a lease and release in the same deed was a good conveyance, for priority would be supposed. And this mode is attended with the advantage of rendering it impossible that it should be separated from the release; a circumstance that very frequently happens, and often furnishes an objection to the title. If the lease for a year be comprised in the release, say,

The form of lease for a year when included in the release.

“AND WHEREAS for the purpose of transferring the possession of the said lands and hereditaments unto the said (*purchaser*), and enabling him to take a release of the reversion and inheritance of the same to him and his heirs, it hath been agreed that the said (*vendor*) shall execute such bargain and sale to him thereof, as hereinafter is expressed. NOW THEREFORE THIS INDENTURE WITNESSETH, that in consideration of the premises, and for and in consideration of the sum of 5s. of lawful current money of Great Britain, to the said (*vendor*) in hand, well and truly paid by the said (*purchaser*), at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, ~~He~~ the said (*vendor*) ~~HATH~~ bargained and sold, and by these

consideration of the sum of £ of lawful money **PURCHASES.**
of the united kingdom of Great Britain and Ire-
land, of English value and currency (8), to the

*Release,
Short Form.*

presents BOTH bargain and sell unto the said (*purchaser*),
ALL, &c. (*inserting here the parcels, or saying*), ALL and
singular the several messuages, lands, tenements, and here-
ditaments hereinafter described, and intended to be by these
presents granted and released. TO HAVE AND TO HOLD the
said messuages, lands, tenements, and hereditaments, and
all and singular other the premises hereinbefore bargained
and sold, or intended so to be, with their respective rights,
members, and appurtenances, unto the said (*purchaser*), his
executors, administrators, and assigns, from the day next
before the day of the date of these presents, for the term of
one year thence next ensuing, to the intent, that by virtue
hereof, and of the statute made for transferring uses into
possession, be the said (*purchaser*) may be in the actual or
legal possession of the same hereditaments and premises,
with the appurtenances, and thereby be enabled to accept
and take a grant and release of the freehold, reversion, and
inheritance thereof, unto and to the use of him the said
(*purchaser*), his heirs, and assigns, by and under, and
according to the true intent and meaning of the grant and
release of the same premises hereinafter mentioned. AND
THIS INDENTURE FURTHER WITNESSETH, that in further
pursuance and execution of the said agreement, and in con-
sideration," &c. *as above*.

(8) If the consideration be a transfer of money in the funds,
say,

Consideration a
transfer of
money in the
funds.

" In consideration of the capital sum of £ three
per cent. consolidated bank annuities, this day transferred
by the said (*purchaser*) into the name and for the benefit of
the said (*vendor*), in the books of the Governor and Com-
pany of the Bank of England kept for that purpose, the
transfer of which capital sum of £ three per cent. con-
solidated bank annuities, and that the same is in full," &c.
as above.

PURCHASES. said (*vendor*) in hand paid by the said (*purchaser*)
at the time of the sealing and delivery of these

*Release,
Short Form.*

Consideration
the grant of an
annuity.

If the consideration be the grant of an annuity during the life of the vendor, say,

“ And in consideration that the said (*purchaser*) hath, by an indenture bearing even date with these presents, and made or expressed to be made between, &c. and by a warrant of attorney to enter up judgment against the said (*purchaser*) for the sum of £ and costs of suit, secured unto the said (*vendor*) and his assigns, for and during the term of his natural life, one annuity or clear yearly sum of £ . HE the said (*vendor*) HATH granted,” &c. *as above.*

Consideration
paid in bills of
exchange.

If the consideration be paid in bills of exchange, say,

“ In consideration of the sum of £ to be well and truly paid to the said (*vendor*) by the said (*purchaser*), in the manner and at the time hereinafter mentioned; that is to say, the sum of £ , part thereof in or by one good and lawful bill of exchange bearing even date with these presents, drawn by the said (*vendor*) upon and accepted by the said (*purchaser*), for the said sum of £ , payable months after date, unto the said (*vendor*) or his order; and the further sum of £ being the residue thereof, in and by one other like bill of exchange, for such last mentioned sum of £ , payable months after date, making together the sum of £ , the receipt of which said two bills of exchange, and that the same when duly honoured and paid will be in full for the purchase or consideration money of or for the hereditaments hereinafter described, the said (*vendor*) doth hereby acknowledge (but the said securities and acknowledgment being without prejudice to any remedy or means for compelling payment of the respective sums of £ and £ , when respectively payable, according to the custom of merchants, or to the amount of the same being a lien and charge upon the said hereditaments until the same shall be fully paid and satisfied), HE the said (*vendor*) HATH granted,” &c. *as above.*

presents, the receipt whereof, and that the same is in full for the absolute purchase of the inheritance

PURCHASES.

Release,
Short Form.

If the purchase money be not paid, but a bond be given for the payment of it at a future time, see *ante*, No. XV. p. 124, n. (7), say,

Purchase money
secured by bond
of purchaser.

“ For and in consideration of a certain bond or obligation in writing, under the hand and seal of the said (*purchaser*), and bearing even date with these presents, in the penal sum of £ , (conditioned to be void on payment by the said (*purchaser*), his heirs, executors, or administrators, to the said (*vendor*), his executors, administrators, or assigns, of the said sum of £ on the day of now next ensuing, with interest for the same after the rate of 5 per cent. per annum in the mean time), being delivered unto him the said (*vendor*) at or before the sealing and delivery of these presents, and in consideration of the said sum with interest after the rate aforesaid, being so well and truly paid according to the true intent and meaning of the said bond and of these presents (the receipt of which said bond or obligation, and that the said sum of £ thereby secured will, when well and duly paid, be in full for the purchase or consideration money of or for the hereditaments hereinafter described, the said (*vendor*) doth hereby expressly acknowledge), HE the said (*vendor*) HATH granted,” &c. *as above*.

If part of the purchase or consideration money has been previously paid, say,

Consideration
previously paid.

“ For and in consideration of the sum of £ heretofore paid by the said (*purchaser*) by way of deposit, and in part of the said purchase money or sum of £ , and of the further sum of £ of lawful money of the united kingdom of Great Britain and Ireland of English value and currency, being the residue and in full of the said purchase money, by him in hand well and truly paid to the said (*vendor*), at or immediately before the sealing and delivery of these presents, the payment of which two several sums of £ and £

PURCHASER, in fee simple in possession, of the messuages,
lands, tenements, and hereditaments, hereinafter

*Release,
Short Form.*

making together the sum of £ , and that the same is in full for the purchase," &c. *as above*.

Consideration a
debt owing by
the vendor.

If the consideration be a debt owing by the vendor to the purchaser, say,

"For and in consideration of the sum of £ of lawful money of the united kingdom of Great Britain and Ireland now justly due and owing by the said (*vendor*) to the said (*purchaser*) upon a certain bond or obligation of the (*vendor*) bearing date the day of ; [or, upon a certain bill of exchange, or promissory note under the hand or acceptance of the said (*vendor*), or for money lent, or goods sold and delivered unto the said (*vendor*), *as the case may be*], and which the said (*vendor*) doth hereby expressly acknowledge, and of the release and acquittance for the same hereinafter contained, and of the said bond and all other securities for the same being delivered up to be cancelled, HE the said (*vendor*) HATH granted," &c. *as above*.

Part of purchase
money retained.

If part of the purchase money be retained by the purchaser on account of the minority of a necessary party to the deed or the like, say,

"For and in consideration of the sum of £ of lawful money of the united kingdom of Great Britain and Ireland, of English value and currency, part of the said purchase money or sum of £ in hand well and truly to the said (*vendor*) by the said (*purchaser*), at or before the sealing and delivery of these presents, the receipt whereof and that the same is so in part as aforesaid, the said (*vendor*) doth hereby expressly acknowledge, and also for and in consideration of the covenants and trusts hereinafter contained by and on the part of the said (*purchaser*) as to and concerning the further sum of £ , being the residue and in full of the said purchase money or sum of £ , so retained by the said (*purchaser*) as hereinbefore is mentioned, HE the said (*vendor*) HATH," &c. *as above*.

described (9), the said (*vendor*) doth hereby expressly acknowledge, He the said (*vendor*) (10) HATH granted, bargained, sold, aliened, and released, and by these presents DOTH grant, bargain, sell, alien, release, and confirm unto

PURCHASED.

*Release,
Short Form.*

(9) When the release is accompanied by a bargain and sale to be inrolled (which is generally proper where the subject of the conveyance is a reversion, an advowson, or other hereditament of which no visible possession can be had under the purchase, and where therefore the deed of conveyance is the only evidence of the purchaser's title) add here,

Release accompanied by a bargain and sale to be enrolled.

“AND which said sum of £ is the same sum of £ as is expressed to be the consideration money of an indenture of bargain and sale bearing or intended to bear even date herewith, and to be made between the same parties as are parties hereto, for the purpose of being inrolled in one of his majesty's courts at Westminster.”

But as the intent of such inrolment is to preserve admissible evidence of the title of the bargainee, in the event of the deed of conveyance being destroyed, and this evidence might not be considered as conclusive if any other concomitant deed of title were referred to, it should seem to be better not to make a similar reference to the release in the deed of bargain and sale; this does not, however, seem to be generally attended to.—See *Horsm.* 166, and the other printed books of precedents.

(10) If the purchase be made by an agent on the part of the purchaser, or the purchaser buys of a person who had previously bought but not taken a conveyance, add,

Sub-purchase.

“With the privity and at and by the request and direction of the said (*agent*) or (*former purchaser*), testified by his being a party to and sealing and delivering these presents, HATH granted, bargained, sold, aliened, and released, and by these presents DOTH grant, bargain, sell, alien, and release, and the said (*agent or former purchaser*) HATH bargained, sold, aliened, released, ratified, and confirmed, and by these presents DOTH bargain, sell, alien, release, ratify, and confirm unto the said (*purchaser*),” &c. *as above*.

PURCHASES. the said (*purchaser*) and his heirs, ALL (11),

Release,
Short Form.

 &c. or howsoever otherwise the said hereditaments and premises, or any part thereof, now are, or is, or heretofore were or was situated, tenanted, called, known, or described; and also all other (12) the messuages, lands, tenements, and hereditaments (if any) comprised in the in-

Parcels.

(11) Insert here an accurate description of the premises intended to be conveyed, by their ancient and present names, situation, tenancy, and see *ante*, No. XV. p. 128, n. (13).

Lease for year
in the release.

If the bargain and sale be comprised in the release, and the parcels have been already inserted, see *ante*, n. (4), say,

“All and singular the several messuages, tenements, lands, and hereditaments, comprised or described in or by the bargain and sale hereinbefore made to the said (*purchaser*) for the term of one year, as hereinbefore is expressed,” &c.

New River
water-works.

If the subject of the conveyance be a NEW RIVER SHARE, which is real property, say,

“All that one thirty-sixth share, part or proportion (the whole into thirty-six parts or shares being divided), of and in one moiety of that stream or river, commonly called the New River water-cut, arising or coming from or near Ware, in the county of Hertford, and brought and continued to a place called Sadler’s Wells, in the county of Middlesex, and also of and in all and every sum and sums of money, rents, payments, profits, emoluments, benefits, and advantages whatsoever, now or at any time and from time to time hereafter to be paid, made, or received, from or by means thereof, together with all and singular the rights, members, and appurtenances to the same premises belonging or in anywise appertaining, or therewith,” &c. (*as in the text*).

Lease for a year
in the release.

(12) See the reason of this reference, *ante*, No. XV. p. 129, n. (15). But if the lease for a year is comprised in the same deed, it must be omitted.

denture of bargain and sale for a year, hereinafter referred to (13); TOGETHER with all (14) out-

PURCHASES.

*Release,
Short Form.*

(13) If the vendor be entitled to the land by purchase from a former vendor, or under a devise, and the operative part of the deed is not introduced by a recital of the vendor's title, (see Shep. Prec. Prec. 87.) add

If no recital of title.

“ Which said messuages, lands, and hereditaments, were formerly the estate and property of C. B. late of, &c. from whom they were purchased by the said (*now vendor*) for a valuable consideration, or by whom they were devised to the said (*now vendor*), or from whom they descended to and are now vested in the said (*vendor*) as his heir at law.”

(14) Make these general words correspond with the nature of the subject of conveyance, and see general words applicable to the different kinds of real property—Precedent No. XV. note (20) and INDEX *voc.* GENERAL WORDS.

General words.

If the conveyance be of a manor, say,

Manor.

“ Together with all houses, out-houses, buildings, barns, stables, wash-houses, dove-houses, yards, cellars, vaults, areas, benefit and advantage of ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, pumps, pipes, drains, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, wastes, rights and privileges of common, and of feeding and foldage of every kind, and also all and all manner of parks, warrens, mills, mulctures, customs, tolls, duties, fishings, fisheries, fowlings, courts leet, courts baron, and other courts, with the perquisites and profits of the same, view of frankpledge, and all that thereto belongeth, chief rents, quit rents, rents of assize, and other rents and services, reliefs, heriots, fines, amerciaments, goods and chattels of felons and fugitives, felons themselves, condemned and outlawed persons, deodands, waifs, estrays, free warrens, and all and all manner of other royalties, jurisdictions, franchises, rights, liberties, privileges, hereditaments, emoluments, advantages, and appurtenances whatsoever, to

PURCHASES.

*Release,
Short Form.*

Reference to
the bargain and
sale for a year.

houses, buildings, yards, cellars, vaults, areas, benefit and advantage of ancient and other lights, ways, water-courses, rights and privileges of common of every kind, and all and all manner of other rights, privileges, easements, advantages, appendages, and appurtenances, whatsoever, ~~to the~~ said hereditaments and premises, or any part thereof belonging, or with the same or any of them now or heretofore holden, occupied, or enjoyed; (All which said messuages, lands, tenements, and hereditaments are now in the possession of, or legally vested in the said (*purchaser*) by virtue (15) of a

the said manor or lordship, or reputed manor or lordship, farms, lands, hereditaments and premises belonging, or in anywise appertaining, or with the same," &c. (*as in the text*).

Corporation
must convey by
lease at common
law.

(15) If the conveyance be made by a body corporate, and the mode of conveyance by lease and release be adopted, which is not unusual, although not in general an eligible mode, see *ante*, p. 118. n. (5), the lease must be a lease at common law, followed by actual entry by the lessee, in which case instead of the words in the text, say,

"All which said messuages, lands, tenements, and hereditaments are now in the actual possession of the said (*purchaser*), by virtue of a demise or lease to him thereof made by the said (*vendor*), by an indenture bearing date the day of _____, for the term of one year, and of actual entry made upon the said premises in pursuance thereof."

Memorandum of
entry should be
indorsed.

As the entry of the lessee is in this case essential to the operation of the release, it will be proper that a memorandum of such entry should be indorsed on the lease, as

"Memorandum, that on the day and year first above written actual entry was made by the said (*purchaser*) upon

bargain and sale (16) for a year to him thereof made by the said (*vendor*) for 5s. consideration by an indenture bearing date on the day next before the date of these presents, and by force of the statute made for transferring uses into possession ;) and the reversion and reversions, and remainder and remainders of and in the said hereditaments and premises, and the rents, issues, and proceeds thereof to arise or become payable from the day of now last past ; and all the estate, right, title, interest, property, claim, and demand whatsoever, of him the said (*vendor*) in, to, or respecting the said hereditaments and premises, or any part thereof ; Together with all deeds, muniments, and writings whatsoever, in anywise relating to the said premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, which now are or hereafter shall or may be in the possession or lawful power of the said (*vendor*), his heirs, executors, or administrators, or of any person or persons from whom he or they can or may procure the same without action or suit at law or

PURCHASES.

*Release,
Short Form.*

Grant of title
deeds.

the lands comprised in the within written indenture, in pursuance of the same indenture, in the presence of us,

A. B.

C. D."

(16) If the bargain and sale be comprised in the deed of release, say, Lease for a year
in the release.

" By virtue of the bargain and sale for a year so made to him thereof, as hereinbefore is expressed, and by force of the statute made for transferring uses into possession."

PURCHASES.

*Release,
Short Form.*

And attested
copies.

To HOLD to the
purchaser in fee
simple.

in equity; and true and attested copies, when and as the said (*purchaser*) his heirs or assigns shall require the same, of all deeds, muniments, and writings (not being of record), so now in his or their custody or power, or which can or may be procured without action or suit as aforesaid, and in anywise relate to the said hereditaments and premises, or any part thereof, jointly with other hereditaments or property of equal or greater value; (such copies, when first required, to be made and delivered at the expense of the said (*vendor*) his heirs, executors, or administrators; but all future copies to be made and taken at the expense of the person or persons requiring the same). To HAVE AND TO HOLD the said messuages, lands, tenements, and hereditaments, with their and every of their rights, members, and appurtenances, and all and singular other the premises hereby granted and released, or otherwise assured or intended so to be, unto the said (*purchaser*) his heirs and assigns, to and for the use and behoof of him the said (*purchaser*) his heirs and assigns for ever (17).

Part of purchase
money retained.

(17) If part of the purchase money has been retained by the purchaser on account of the minority of a necessary party to the deed, or for the purpose of paying portions or legacies to children not yet of age, insert here a declaration by the purchaser that he will pay the money when the minor shall attain his age of twenty-one years. For the form of this declaration see *post*, p. 193. Rider C.

Sub-purchase.

If the original purchaser has parted with his interest in the premises to a third person before the conveyance was executed to him, and the conveyance is now made by the vendor to such third person, add here a covenant by the original pur-

AND the said (*vendor*) for himself, his heirs (18), executors, and administrators, doth hereby covenant and declare with and to the said (*purchaser*) his heirs and assigns, in the manner following (that is to say) that for and notwithstanding any act, deed, matter or thing whatsoever, at any time heretofore made, done, executed, or knowingly occasioned or suffered by him the said (*vendor*) (19) or any trustees or trustee for him to the con-

PURCHASES.

Release,
Short Form.

Covenant by
vendor that he
is seised in fee.

chaser that he has not incumbered: the form of this covenant may be as follows,

“ And the said (*original purchaser*) for himself, his heirs, executors, and administrators, doth hereby covenant and declare with and to the said (*present purchaser*), his heirs and assigns in the manner following, that is to say, that he the said (*original purchaser*) hath not at any time heretofore made, done, committed, executed, or knowingly occasioned, suffered, or omitted, nor been party or privy to any act, deed, matter, or thing whatever, whereby or by reason or means whereof the messuages, lands, tenements, hereditaments, and premises hereinbefore granted and released, or intended so to be, or any of them, or any part thereof respectively, or any estate or interest therein, can or may be impeached, charged, incumbered, or prejudicially affected in possession, remainder, reversion, title, estate, or otherwise howsoever, or whereby the said (*original purchaser*) is or may be prevented from conveying and assuring the said hereditaments and premises unto the said (*present purchaser*) and his heirs in the manner aforesaid, and according to the true intent and meaning of these presents.”

Covenant by
original pur-
chaser that he
has not incum-
bered.

(18) If the conveyance be by a body corporate, the covenant will be for themselves and their “successors,” instead “of heirs, executors, and administrators;” and if to a corporation, “their successors and assigns” instead of the words, “his heirs and assigns” throughout the deed.

Corporation.

(19) If the vendor took as a bona fide purchaser, the cove-

Vendor a bona
fide purchaser.

PURCHASES.

*Release,
Short Form.*

And hath right
to convey.

trary, he the said (*vendor*) at the time of the sealing and delivery of these presents, is lawfully and rightfully seised in his demesne as of fee, in his own right, and to his own use, of all and singular the messuages, lands, tenements, hereditaments, and premises hereinbefore granted and released, or otherwise assured, or intended so to be, as of and for a good, perfect, clear, absolute, and indefeasible estate of inheritance, in fee simple in possession and in severalty, without any manner of trust, power, condition, qualification, restriction, matter or thing whatsoever, expressed or implied, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever: And also that for and notwithstanding any such act, deed, matter or thing as aforesaid, he the said (*vendor*) now hath in himself full power, and lawful and absolute right and title to grant, bargain, sell, release, and assure, all and singular the said hereditaments and premises, and the possession, reversion, and inheritance thereof, unto and to and

nant must be confined to his own acts, as in the text, and see *ante*, No. XV. p. 141. n. (39), but if he took by devise or by voluntary conveyance, say

Vendor taking
by devise or
voluntary conveyance.

“ By him the said (*vendor*), or the said A. B. (*the devisor or other last purchaser*) or any trustees or trustee for him, them, or either of them, to the contrary.”

Vendor taking
by descent.

If the vendor took by descent, say

“ By him the said (*vendor*), or any of his ancestors, or any trustees or trustee for him, them, or any or either of them to the contrary.”

for the use and behoof of the said (*purchaser*) his heirs and assigns, in the manner aforesaid, and according to the true meaning of these presents. AND that the said (*purchaser*) his heirs and assigns, shall and lawfully may, immediately upon the sealing and delivery of these presents enter into and upon, and at all times thereafter hold, occupy, possess, and enjoy, all and singular the same hereditaments and premises, with their and every of their respective rights, members, and appurtenances, and receive and retain the rents, issues, profits, and proceeds thereof, to and for his and their own use and benefit, without any manner of hindrance, interruption, disturbance, claim, or demand whatsoever, by or from the said (*vendor*) (20), or his heirs, or any person or persons now or at any time hereafter lawfully or equitably entitled to the said hereditaments and premises, or any part thereof, or to any estate or interest therein (21), from, through, under, or in trust for him,

PURCHASES.

*Release,
Short Form.*

That the purchaser shall quietly enjoy.

(20) If the vendor took by devise or by a voluntary conveyance, say

Vendor taking by devise or voluntary conveyance.

“ From, through, under, or in trust for him, them, or any of them, or the said A. B. (*the devisor or other last purchaser*).”

If by descent from his ancestors, say

Vendor taking by descent.

“ From, through, under, or in trust for him, them, or any of them, or any of the ancestors of the said (*vendor*).”

(21) If there have been any leases granted of the premises which are still subsisting, add

“ Other than through, under, or by virtue of any leases, or agreements for leases, of which counterparts or abstracts have been produced or delivered unto the said (*purchaser*),

Subsisting leases.

PURCHASES.

*Release,
Short Form.*

Free from incumbrances.

Covenant for further assurance.

Vendor taking by devise or voluntary conveyance.

Vendor taking by descent.

Subsisting leases.

them, or any of them. AND that free and clear, or by and at the expense of the said (*vendor*) his heirs, executors or administrators, effectually protected and indemnified, from and against all former and other grants, bargains and sales, releases, conveyances, and assurances, and all estates, rights, titles, interests, charges, liens, and incumbrances whatsoever, which at any time or times heretofore have been, or at any time or times hereafter shall or may be made, executed, created, occasioned, or knowingly suffered by him the said (*vendor*), or any person or persons claiming, or having title to claim any estate, right, title, or interest either at law or in equity, from, through, under, or in trust for him (22), or by or through his acts, means, or defaults (23). AND moreover,

his counsel or solicitor, at or before the sealing and delivery of these presents."

(22) If the vendor took by devise or by a voluntary conveyance, say

"From, through, under, or in trust for him, or the said A. B. (*the deviser or other last purchaser*), or by or through his or their acts, means, or defaults."

If by descent from his ancestors, say

"From, through, under, or in trust for him or any of his ancestors, or by or through his, their, or any or either of their acts, means, or defaults."

(23) If there have been any leases granted of the premises which are still subsisting, or the premises are subject to the land or sewers tax, add

"Such leases or agreements for leases as aforesaid, and the land and sewers tax to become due for or in respect of the said premises, from the day of last past only excepted."

that he the said (*vendor*) and his heirs, and all and every other person or persons now or at any time hereafter rightfully claiming, or entitled to claim, any estate or interest at law or in equity, in or relating to the messuages, lands, tenements, hereditaments, and premises hereinbefore granted and released, or otherwise assured, or intended so to be, or any part thereof, from, through, under, or in trust for (24) him or them, or by or through his or their acts, means, or defaults (25), shall and will from time to time, and at all times hereafter, upon the request, and at the costs and expense of the said (*purchaser*) his heirs or assigns, make, do, acknowledge, levy, suffer, execute, and perfect, all and every such further and other lawful and reasonable acts, deeds, conveyances, assurances, matters, and things whatsoever, whether by feoffment, fine, common recovery, limitation, or de-

PURCHASES.

*Release,
Short Form.*

(24) If the vendor took by devise or by a voluntary conveyance, say

Vendor taking
by devise or
voluntary conveyance.

“ From, through, under, or in trust for him or them, or the said A. B. (*the devisor or other last purchaser*), or his or their acts, means, or defaults.”

If by descent from his ancestors, say

Vendor taking
by descent.

“ From, through, under, or in trust for him or them, or any of the ancestors of the said (*vendor*), or by or through his, their, or any or either of their acts, means, or defaults.”

(25) If there have been any leases granted of the premises which are still subsisting, add

Subsisting
leases.

“ Other than any persons claiming under or by virtue of any such leases, or agreements for leases as aforesaid, so far as concerns their respective estates and interests under or by virtue of the same.”

PURCHASES. *Release,
Short Form.* clarification of use, or otherwise howsoever, for the better and more effectually or satisfactorily conveying and assuring the said messuages, lands, tenements, hereditaments and premises, and every or any part thereof, and the possession, reversion, and inheritance of the same, with their respective rights, members, and appurtenances, unto and to the use of or for the said (*purchaser*) his heirs or assigns, in such manner and form as he or they, or his or their counsel in the law, being of the degree of a barrister, shall advise and require (26). IN

Defect in evidence of title.

(26) If there be any defect of evidence remaining unsupplied at the time of the purchase being completed, reference may be made to such defects by adding to this covenant,

“ And also for obtaining any certificate or certificates, or other document or documents, or evidence or evidences whatsoever, which in or by the opinion in writing, under the hand of such counsel in the law of the said (*purchaser*), his heirs or assigns as aforesaid, shall be requisite for clearing up, elucidating, or removing any apparent obscurities, defects, or objections in or concerning the title of him the said (*vendor*) to the said hereditaments, or any part thereof.”

“ And also for getting in and assigning unto the said (*purchaser*), his heirs and assigns, or to a trustee or trustees for him or them, a certain term, &c. and all or any outstanding terms, estates, and interests affecting the said hereditaments, or any part thereof.”

Repayment of purchase money on defect of title.

The following proviso for repayment of the purchase money is sometimes added to the covenant for further assurance, where any doubt exists respecting the title, see Shep. Prec. Prec. 121.

“ PROVIDED also, that if it shall happen that the said (*purchaser*) his heirs or assigns, shall at any time hereafter, within 60 years next after the date hereof, be lawfully

WITNESS whereof the said parties to these PURCHASES.
presents have hereunto set and affixed their re-

*Release,
Short Form.*

evicted of or from the possession and enjoyment of the said lands and hereditaments, or any part or parcel thereof, he the said (*vendor*) his executors or administrators, shall and will, within the space of three calendar months next after notice in writing shall be given to him or them thereof, well and truly pay, or cause to be paid, unto the said (*purchaser*) his heirs and assigns, the full and clear sum of £ in case such eviction shall extend to the whole of the said hereditaments and premises, or if to a part only thereof, then such sum of money as the premises from which he or they shall be so ejected, shall be reasonably worth."

If the vendor retain his title deeds, by reason of their relating equally to other of his lands of greater value or otherwise, the purchaser will be entitled to a covenant for the production of them, *Berry v. Young*, 2 Esp. Ca. 640. This covenant may be inserted in the deed of conveyance after the covenants for the title, or it may be entered into by a separate deed, and, as such covenant must be at the vendor's expense, and will enable the purchaser to avail himself of the covenant without exhibiting his purchase deed, and will also (if suitably framed) enable the vendor more conveniently to exonerate himself from the requisitions of the covenant, by transferring them to any future purchaser of the lands remaining unsold. This mode is now generally adopted, see the form of such deed in *WILDE'S SUPPLEMENT*, Vol. I. No. lxxii. p. 470. But if the covenant be introduced in the deed of conveyance; see *post*, p. 196. Rider (D).

Deeds retained
by vendor.

The covenant for producing of title deeds is a real covenant, and runs with the land, and gives all future purchasers the benefit of it, *Fearn*, P. Wks. 111. but if the covenant be not delivered to him so as to enable him to avail himself of it, he will be entitled to a like covenant from his vendor, *Napper v. Allington*, 1 Eq. C. Ab. 166.

Covenant for
production of
title deeds runs
with the land.

And if the estate were sold by lots, and the purchaser was the highest bidder for the largest lot, and required by the conditions of sale to covenant for the production of the title deeds to the smaller purchasers, see also *WILDE'S SUPPLEMENT*, No. lxxii. p. 470.

Sale by lots.

PURCHASES. spective hands (27) and seals the day and year first above written.

*Release,
Short Form.*

Signed, sealed, and delivered (28) by the said (*vendor*) and (*purchaser*) in the presence of us.

Corporation.

(27) If the conveyance be by a corporation, say

“IN WITNESS whereof the said (*corporation*) have hereunto affixed their common seal the day and year first above written.”

**No delivery by
corporation.**

If the conveyance be by a corporation actual delivery of the deed will not be necessary, *Willis v. Jermin*, Cro. Eliz. 167. the fixing of the common seal being considered tantamount to delivery.

**Execution by
attorney.**

(28) If the deed be executed by attorney, insert here,

“IN WITNESS whereof the said (*vendor*) by A. B. of, &c. his attorney, lawfully authorized in that behalf by a certain power of attorney hereunto annexed or hereupon indorsed hath hereunto set his hand and seal. And the said (*purchaser*) hath hereunto set his hand and seal the day and year first above written.”

And the name of the grantor should be signed by the attorney, *vide ante*, p. 37. n. (31). thus

G. H. (*vendor*).

By A. B. his attorney.

And the words accompanying the delivery should be,

“I deliver this as the act and deed of the above named (*vendor*).”

And the attestation may be thus,

“Signed, sealed, and delivered, on the day and year first above written, by A. B. as the attorney, in the name, and as the act and deed of the within named (*vendor*) in the presence of,” &c.

**As to execution
by attorney.**

These precautions are proper, amongst other reasons, to prevent the attorney becoming personally liable to the consequences of the contract; the attorney need not, however, be named a party to the deed.

Where a deed is executed by power of attorney, it is proper, for the satisfaction and security of the parties, that there should

Receipt for the purchase or consideration money to be indorsed on the deed. **PURCHASES.**

Received the day and year first within written from the within named (*purchaser*) the sum of £ (29) being the full consideration money within

*Release,
Short Form.*

be two parts of the power, one to be retained by the attorney, and the other to accompany and be annexed to the purchaser's conveyance, as a production of the power may always be required, 1 Esp. Rep. 90.

And when a conveyance is executed by attorney, it seems proper that he should execute a declaration of trust, to stand possessed of the money for the purchaser, until sufficient evidence be produced of his principal being alive at the time of the execution of the conveyance; and if he prove not to have been living then until an effectual conveyance be procured from his heir at law; for as a power of attorney is vacated by the death of the principal, if this event should happen before the execution of the deed by the attorney, nothing will pass; see the form of such declaration referred to, INDEX *voc.* TRUST; and also WILDE'S SUPPLEMENT, Vol. I. No. xlvi. p. 366. for the form of a bond for the like purpose.

It is here observable, however, that a purchaser is not obliged to accept of a conveyance from an attorney (unless perhaps where he knew at the time of the contract of the impracticability of its being executed by the vendor himself) on account of the inconvenience it may subject him to in proving the execution, or by the death or previous revocation of the power given by the vendor, see *Johnson v. Mason*, 1 Esp. Ca. 89. *Coore v. Calloway*, ib. 115. *Richards v. Barton*, ib. 268. *Mitchell v. Neale*, 2 Ves. 679. *Shipman v. Thompson*, Willes, 103. *Wynne v. Thomas*, ib. 563. *Wallace v. Cook*, 5 Esp. Ca. 117. But quere, whether an appointment of an attorney for this purpose would now be held to be revocable, and see *Walsh v. Whitcomb*, 2 Esp. Ca. 565. See also INTRODUCTION, sec. III.

(29) If part of the purchase money be retained, say,

“ In part of the within mentioned purchase money or

Part of purchase
money retained.

PURCHASES. mentioned to have been paid by him to me for the
 sale and conveyance of the lands and hereditaments
 within described. G. H. (*vendor*).

*Release,
Short Form.*

sum of £ , the sum of £ residue thereof being retained by him for the purposes within mentioned."

Bills of ex-
change or bond.

If the purchase money be paid in bills of exchange, or be secured by bond, say,

"The several within mentioned bills of exchange [*or* bond], for the within mentioned purchase money or sum of £ , which, when duly paid [*or* satisfied], will be in full of the same sum of £ , to be paid by him to me as within is mentioned, but which said bills of exchange [*or* bond] are accepted by me without prejudice to any lien upon the within mentioned premises for the amount thereof."

Consideration
previously paid.

If the consideration money have been previously paid, say,

"I do acknowledge to have received of the within named (*purchaser*) the sum of £ in full for the purchase of the within mentioned premises, at the time and in the manner the same is within expressed to have been paid by him to me."

Consideration
a transfer of
money in the
funds.

If the consideration for the purchase be a transfer of money in the funds, say,

"I do hereby acknowledge that the within mentioned sum of £ three per cent. consolidated bank annuities, was, on the day and year first within written, transferred into my name on the books of the Governor and Company of the Bank of England by the within mentioned (*purchaser*), (as by a certificate thereof now delivered to me doth appear), for and in full of the consideration money agreed to be given by him to me for the purchase of the within mentioned premises."

Consideration a
debt owing by
the vendor.

If the consideration for the purchase be a debt owing by the vendor to the purchaser, say,

“ I do hereby acknowledge that the within mentioned **PURCHASES.**
debt or sum of £ was, at the time of the execution _____
of the within written indenture, justly due and owing by *Release,*
me to the said (*purchaser*), and that his release to me *Short Form.*
therefrom is in full for the purchase or consideration money
of or for the within mentioned premises.”

PURCHASES.

Sale by Order of Court.

(A) *Variation in a Deed, where the Estate was sold before a Master in Chancery, or the Deputy Remembrancer of the Court of Exchequer—see ante, p. 163, note (4).*

Recital of decree.

AND WHEREAS, by a decree or decretal order of the High Court of Chancery (or of his Majesty's Court of Exchequer at Westminster) bearing date the day of , and made in a certain cause then and now there depending, in which the said is plaintiff, and

Recital of sale.

 defendant, it was, amongst other things, ordered and decreed, that the said lands and hereditaments should be sold, with the approbation of , one of the Masters (or Deputy Remembrancer) of the said Court, to the best purchaser or purchasers that could be procured for the same, to be allowed of by the said Master (or Deputy Remembrancer) and that all proper parties should join in the conveyance thereof, in such manner as the said Master (or Deputy Remembrancer) should direct. AND WHEREAS in pursuance of the said decree or decretal order, the said lands and hereditaments were put up to sale on the day of now last past, before the said Master, at the public sale room, in in one lot or parcel (or in several lots or parcels *as the case was*) at which sale the said (*purchaser*) became and was declared to be the highest bidder and the purchaser thereof (or of lot No. in certain printed particulars of the said estates there exhibited)

Recital of master's report.

at the sum of £ . And the said Master (or Deputy Remembrancer) by his report made in the said cause, bearing date the day of last past, certified and allowed the said (*purchaser*) to be the purchaser of the said premises, at the said sum of £ upon his making a deposit of £ in part of the said purchase money (1) as directed

Deposit not always required.

(1) In sales before a master in Chancery, or the deputy remembrancer of the court of Exchequer, the payment of a part of the purchase money, by way of deposit, is not always

PURCHASES.

—————
*Sale by Order of
 Court.*
 —————

WITNESSES, &c.
 in consideration
 of purchase
 money paid into
 the Bank.

respectively, hath set his name in the margin of each of the skins of these presents, and also in the margin of the said indenture of bargain and sale, and his name and allowance to or upon the last skin hereof. Now THIS INDENTURE WITNESSETH, that in pursuance of and in obedience to the said hereinbefore in part recited decree or decretal order of the said High Court of Chancery (*or* Court of Exchequer) so far as relates to the hereditaments hereinafter described, and intended to be hereby granted and released, or otherwise assured, and for and in consideration of the sum of £ , well and truly paid by the said (*purchaser*) into the Bank of England, on the day of last past, in the name and with the privity of the Accountant-General of the said Court to the credit of the said cause (*or* to the said the said Deputy Remembrancer of the Court of Exchequer) [by way of deposit and in part of his said purchase money as aforesaid; and of the further sum of £ of like lawful and current money, in like manner paid into the said Bank, (*or* to the said Deputy Remembrancer), by the said (*purchaser*)] on the day of the date of these presents, as by the certificate of the said Accountant-General, (*or* of the said Deputy Remembrancer), bearing date the day of now last past, and the receipt of one of the cashiers of the said Bank thereto annexed, and therewith filed, or intended to be filed in the registrar-office of the said Court, (true and exact copies whereof respectively are, or are intended to be hereupon indorsed) upon reference being thereunto respectively had will more fully appear: The payment of which said two several sums of £ and making together the sum of £ in the manner and by the authority aforesaid, and that the same is in full for the absolute purchase of the fee-simple in possession of the hereditaments and premises hereinafter described, and mentioned or intended to be hereby granted and released, the said (*vendor*) doth hereby acknowledge, HE the said (*vendor*) HATH granted," &c. *as ante*, p. 171.

PURCHASES.

*Sale under Writ
of Extent.*

(B) *Variation in a Deed where the Estate is sold by the Deputy Remembrancer of the Court of Exchequer under a Writ of Extent, by virtue of the 25 Geo. 3. c. 35.—see ante, p. 161, n. (2).*

“ WHEREAS, by a writ of extent bearing date the day of in the year of the reign of his present Majesty, issued out of his Majesty’s Court of Exchequer, in pursuance of an inquisition duly taken in that behalf, it was found that the said (*vendor*) was on the day of taking the said inquisition justly indebted to his Majesty in the sum of £ money arising from parliamentary assessed taxes, and otherwise, as therein mentioned. And WHEREAS by an inquisition taken on the day of in the year of the reign of his present Majesty, before the Sheriff of the county of by virtue of the said writ of extent, it was found that the said (*vendor*) was then seised in his demesne as of fee, amongst other hereditaments in the said inquisition set forth, of and in the two several freehold messuages and tenements hereinafter particularly described, which said freehold messuages the said Sheriff had seized and taken into his Majesty’s hands, according to the command of the said writ. AND WHEREAS by an Act of Parliament passed in the 25th year of the reign of his late Majesty King George the Third, entitled ‘ an Act for the more easy and effectual sale of lands, tenements, and hereditaments of crown debtors or their sureties,’ it was declared and enacted that it should be lawful for his Majesty’s Court of Exchequer, and the same Court was thereby authorized, on the application of his Majesty’s Attorney General, to order that the estate and interest of any debtor to his Majesty, his heirs, or successors, and the estate and interest of the heirs and assigns of such debtor in any lands, tenements, and hereditaments which might thereafter be extended under or by virtue of any writ of extent, should be sold in such manner as the said Court should direct. And that when a purchaser or purchasers should be found, the conveyance of the lands, tenements

Recital of writ
of extent.

Recital of in-
quisition taken.

Recital of act
of 25 Geo. III.

PURCHASES.

*Sale under Writ
of Extent.*

Recital of order
of sale.

and hereditaments so decreed to be sold, should be made to the purchaser or purchasers by his Majesty's Remembrancer of the said Court of Exchequer, or by his Deputy, under the direction of the said Court, by a deed of bargain and sale to be enrolled in the said Court, and that from and after the making of such conveyance and the enrollment thereof as aforesaid, the bargainee or bargainees in such conveyance, and his or their heirs, executors, administrators, and assigns, should have, hold, and enjoy the lands, tenements, and hereditaments therein comprised for his and their own respective use and benefit, not only against the extent of the Crown, but also against such debtor of the Crown, his surety or sureties, and all persons claiming under him or them, unless by a title paramount to and available in law against such extent as aforesaid. **AND WHEREAS** by an order of his Majesty's Court of Exchequer, bearing date the day of upon a motion of his Majesty's Attorney General on behalf of his Majesty, praying that the said extended premises might be sold pursuant to the directions of the hereinbefore in part recited act, **IT WAS ORDERED** in pursuance of the said Act that all the estate, right, title, and interest of him the said (*vendor*) of and in the said extended freehold messuages, lands, tenements, and hereditaments mentioned and described in the said inquisition should be forthwith sold before Esquire, the Deputy Remembrancer of the said Court, as he should direct, in order to satisfy the debt due to his Majesty, so far as the money arising from such sale would extend, and that all proper parties should join in such sale. **AND IT WAS FURTHER ORDERED**, that when a purchaser or purchasers should be found for the absolute purchase of the said extended premises, the said Deputy Remembrancer should make his report or reports to the said Court concerning the same. **AND WHEREAS," &c. as in the last Variation.**

PURCHASES.

*Consideration
money retained.*

(C) *Variation in a Deed where part of the Consideration Money is retained by the Purchaser on account of Minority; Also where retained for payment of Legacies, &c. See ante, p. 176, note (17).*

“ AND as to and concerning the said sum of £
part or residue of the said purchase money or sum of £
so retained by the said (*purchaser*) as aforesaid, it is hereby
declared and agreed by and between the said (*vendor and
purchaser*), that the same shall be so retained by and remain
in the hands of him the said (*purchaser*), his executors, and
administrators, and that he and they shall and will stand
possessed of and interested in the same, upon and for the
trusts, intents, and purposes hereinafter expressed concerning
the same (that is to say), UPON TRUST for the said (*vendor*),
his executors, administrators, and assigns, until the said
(*minor &c.*) or his heirs, shall have attained the age of twenty-
one years, and within the space of three calendar months
next thereafter, shall have duly signed, sealed, delivered,
and executed these presents, or other proper and sufficient
conveyances and assurances, of the several hereditaments
and premises hereinbefore described, and meant and intended
to be hereby granted and released, as hereinbefore is ex-
pressed, unto and to the use of the said (*purchaser*), his
heirs and assigns. And the said (*purchaser*) doth hereby
for himself, his heirs, executors, and administrators, covenant
and declare, with and to the said (*vendor*), his executors,
administrators, and assigns, that upon the said (*minor*)
so attaining his age of twenty-one years, and he or his heirs
executing these presents or such other assurances as aforesaid,
he the said (*purchaser*), his executors, or administrators, shall
and will well and truly pay, or cause to be paid, unto him the
said (*vendor*), his executors, administrators, or assigns, the
said sum of £
, so retained by him as hereinbefore is
mentioned; and further that in the mean time and until the
said (*minor, &c.*) or his heirs, shall attain the said age of

Covenant by
purchaser to
pay the money
when defect
removed.

PURCHASES.

Consideration
money retained.

In default of
execution this
proviso to be
void.

twenty-one years, and shall execute such assurances as aforesaid, within the space of three calendar months next thereafter, he the said (*purchaser*), his executors, or administrators, shall and will pay, or cause to be paid unto the said (*vendor*), his executors, administrators, and assigns, interest for the said sum of £ , after the rate of 4 per cent. per annum, to be computed and accounted from the day of the date of these presents, up to the time of such payment thereof as aforesaid, clear of all abatements and deductions whatsoever; and further, that until the said (*purchaser*), his executors, or administrators, shall so pay the said sum of £ , the same or so much thereof as shall for the time being remain unpaid, shall be and remain a charge upon the hereditaments so conveyed to him as aforesaid, with interest after the rate of four per cent. per annum. PROVIDED ALWAYS, and it is hereby agreed and declared, that in case the said (*minor, &c.*) or his heirs, shall neglect or refuse, on tender thereof being made to him or them for that purpose, or shall become incapable to execute such assurances as aforesaid, within the time hereinbefore mentioned for the execution thereof, then and from thenceforth the covenant and agreement hereinbefore contained for payment of the said sum of £ , and interest shall be and become absolutely void to all intents and purposes, and the said (*purchaser*), his executors, administrators, and assigns, shall and lawfully may, upon and immediately after such tender and refusal as aforesaid, retain and keep the said sum of £ , to and for his and their own use and benefit (1).”

Money retained
for payment of
legacies.

If the money retained be for payment of portions or legacies by executors, &c. to children not yet of age, the trust may be varied thus,

“UPON the trusts, and for the ends, intents, and purposes following (that is to say) as to and concerning the sum of £ part or portion of the said sum of £ ,

(1) See a varied form for the above purpose (and in general more applicable) at the end of No. XXV.

so agreed to be retained by the said (*purchaser*), as aforesaid (together with interest for the same after the rate of _____ per cent. per annum), in trust for the said (*legatee*, &c.) until he shall have attained his age of twenty-one years, or otherwise acquired a vested interest in the same, under or by virtue of the said in part recited will of the said (*devisor*) deceased (or shall depart this life under that age or time), and on his attaining that age, shall refuse to execute a good and effectual release, or other discharge, of or for the said sum; and in case and from and after he the said (*legatee*, &c.) shall attain his age of twenty-one years, and shall execute such release or discharge as aforesaid, then in trust to pay the said sum of £ _____, with interest for the same after the rate aforesaid, unto him the said (*legatee*, &c.) his executors, administrators, or assigns, for his and their own use and benefit. AND in case the said (*legatee*, &c.) shall depart this life under or before the age or time aforesaid, then in trust to pay the said sum of £ _____ and interest, unto such person or persons, as in that event shall be entitled thereto under or by virtue of the said in part recited will. And as to and concerning the sum of £ _____ other part or portion of the said sum of £ _____ In trust, &c. (*for other legatees, &c. as before*). PROVIDED ALWAYS, and it is hereby declared and agreed, that in case the said (*legatee*, &c.) shall upon his attaining the said age of twenty-one years (tender being made to him of the said sum of £ _____, and interest), neglect or refuse to execute a good and effectual release or discharge of the said premises, then and from thenceforth it shall be lawful for him the said (*purchaser*), his executors, administrators, or assigns, to retain and keep the said sum of £ _____, as and by way of an indemnity to him and them, from all future claims and demands, for or in respect thereof, and without paying or being accountable to the said (*vendor*), his executors, administrators, or assigns, for any interest in respect of the same. PROVIDED ALSO, and it is hereby likewise agreed, &c. (*similar provisos in relation to any other legatee, &c.*)

PURCHASES.

 Consideration
 money retained.

PURCHASES.

*Production of
Title Deeds.*

(D) *Covenant for the Production of Title Deeds to be contained in a Purchase Deed*, see ante, p. 183, n. (26).

Variations as in the margin.

Covenant by
vendor to pro-
duce title deeds
not delivered.

AND WHEREAS the several deeds, muniments, writings, and evidences of title mentioned in the schedule hereunder written, relate not only to the hereditaments hereinbefore expressed to be conveyed to the said (*purchaser*) but also to other property of the said (*vendor*) of greater value, it has been agreed that the same shall remain in the custody of the said (*vendor*) upon his entering into such covenant for producing and delivering attested copies thereof as hereinafter is expressed. NOW THEREFORE the said (*vendor*) for himself, his heirs, executors, and administrators, doth hereby covenant and declare, with and to the said (*purchaser*), his heirs, and assigns, that he the said (*vendor*), his heirs, and assigns, shall and will from time to time and at all times hereafter (unless prevented by fire or other inevitable accident) upon every reasonable request in writing, and at the expense of the said (*purchaser*), his heirs, and assigns, produce and show forth, in any part of the united kingdom of Great Britain and Ireland, to the said (*purchaser*), his heirs and assigns, or to his or their counsel, solicitor, or others, at or upon any trial, hearing, commission, or examination, in or directed by any competent court of judicature, or to any arbitrators or umpire lawfully appointed, to be inspected, perused, pleaded, or given in evidence, as may be requisite, and upon, or for every or any other proper and reasonable occasion or purpose, all and every or any of the deeds, muniments, writings, and evidences, [mentioned in the schedule hereunder written (*if so*), and also all and every other deeds, muniments, writings, and evidences if any], not being of record, which relate unto or in any manner affect the hereditaments and premises mentioned, or intended to be by these presents granted and released, [together with others of greater or equal value, and which now are or hereafter shall or may be in the custody or lawful power of

him the said (*vendor*), his heirs, or assigns, or which he or they can or may procure without suit at law or in equity], for the manifestation, support, defence, or justification of the possession, estate, right, title, or interest of the said (*purchaser*), his heirs, or assigns, or his or their trustees or trustee, of, in, to, or respecting the said hereditaments and premises, or any of them, or any part thereof. [AND (1) also shall and will at and upon the like request, expense, and costs, and for the like or any other reasonable purpose or purposes, make and deliver, with all due and reasonable diligence and despatch, unto the said (*purchaser*), his heirs, or assigns, or his or their trustee or trustees, or counsel or solicitor, true and attested copies of all and singular or any of the said deeds, muniments, writings, and evidences, or of any part or parts thereof respectively]. [AND also shall and will in the mean time, use and take, and cause to be used and taken, all due and proper care to preserve and keep the same deeds, muniments, writings, and evidences, from being lost, destroyed, cancelled, or otherwise defaced or injured.] And further, that the said (*vendor*), his heirs, executors, administrators, or assigns, shall not nor will at any time hereafter part with or dispose of all or any of the said deeds, muniments, writings, and evidences out of his or their custody or power, without giving unto the person or persons to whom he shall or may part with or dispose of the same notice in writing under his or their hand or hands, of the covenant hereinbefore contained for producing the same as hereinbefore is mentioned.

PURCHASES.

*Production of
Title Deeds.*

If the title deeds are not forthcoming, and therefore cannot be delivered to the purchaser, instead of the preceding covenant, say,

AND WHEREAS the several deeds, muniments, writings, and evidences mentioned in the schedule hereunder written

Like covenant
where title
deeds lost.

(1) The case referred to in *Dare v. Tucker*, 6 Ves. jun. 60, gave rise to this additional covenant for furnishing attested copies, but where such copies are granted in the operative part of the conveyance, it cannot be deemed necessary.

PURCHASES.

*Production of
Title Deeds.*

having been mislaid, so that the same cannot at present be delivered to the said (*purchaser*), the said (*vendor*) hath agreed to enter into such covenant and declaration respecting the same as hereinafter is expressed. Now THEREFORE THIS INDENTURE FURTHER WITNESSETH, that the said (*vendor*), for himself, his heirs, executors, and administrators, doth further covenant, grant, and declare, with and to the said (*purchaser*), his heirs, and assigns, in the manner following, that is to say: that he the said (*vendor*) and his heirs shall and will employ, and use all and every reasonable means and endeavours in his and their power respectively, to discover and obtain possession of all and every the deeds, muniments, writings, and evidences mentioned in the schedule hereunder written, and not delivered to the said (*purchaser*) at the time of the sealing and delivery of these presents, and to that end shall and will, when and so often as it shall be necessary or expedient, either solely or jointly with the said (*purchaser*), his heirs, or assigns, but at the proper expense and costs of the said (*vendor*), his heirs, executors, or administrators, commence, prefer, institute, and duly prosecute all and every such action, or suit, or actions, or suits, at law or in equity, or other means or proceedings as the counsel in the law of the said (*purchaser*), his heirs, or assigns, shall reasonably advise and require, and when and as the said deeds, muniments, writings, and evidences, or any of them shall be found or recovered, or in any manner come to or be in his or their possession, custody or power, he the said (*vendor*) and his heirs shall and will well and truly deliver the same, together with all such other deeds, muniments, and writings as relate to or concern the hereditaments and premises, hereby granted and released or otherwise assured exclusively, or jointly and together with other hereditaments or property of inferior value, unto the said (*purchaser*), his heirs or assigns, to and for his and their own proper use and benefit, or to such other person or persons as he or they shall direct or appoint. AND also shall and will from time to time and at all times hereafter, unless prevented by fire or other inevitable accident, at and upon the reasonable request, and at the proper costs and charges in the law of the said (*pur-*

chaser), his heirs, or assigns, produce or shew forth, or cause and procure to be produced and shewn forth, when and as often as there shall be occasion for the manifestation, support, or justification of the estate, rights, interest, title, or possession of the said (*purchaser*), his heirs, or assigns, to the said several messuages, or tenements, hereditaments, and premises, or any of them at any trial, hearing, or examination in any court or courts of law or equity, or other court of judicature within that part of Great Britain called England, or for the perusal of his or their counsel in the law, or to an attorney, or agent, commissioners, arbitrators, or others, such of the said several deeds, muniments, writings and evidences, as relate to or concern the said hereditaments and premises jointly and together with other hereditaments and property of equal or greater value. And permit and suffer the said (*purchaser*), his heirs or assigns, or his or their attorney, solicitor, or agents, at all convenient times to make and take true and attested copies of all and every such last mentioned deeds, muniments, writings, and evidences. And further, that in the mean time and until the said deeds, muniments, writings, and evidences, shall be found and recovered, and such of them as relate to the hereditaments and premises hereby granted and released or otherwise assured or intended so to be solely and exclusively or jointly and together with other hereditaments and premises of inferior value, shall have been delivered to the said (*purchaser*), his heirs or assigns, or his or their attorney, solicitor, or agent, he the said (*vendor*), his heirs, executors, and administrators, or some or one of them, shall and will from time to time and at all times hereafter for and during the space of years hence next ensuing, absolutely and effectually save, defend, keep harmless, and indemnify the said (*purchaser*) his heirs and assigns, and his and their goods, chattels, lands, and tenements, and particularly the messuages or tenements, lands, hereditaments and premises, hereby granted and released or otherwise assured, of from and against all and all manner of former and other conveyances, assurances, estates, rights, titles, charges, and incumbrances whatsoever, at any time or times hereinbefore made, done, created, executed,

PURCHASES.

*Production of
Title Deeds.*

And in the
mean time to
indemnify the
purchaser.

PURCHASES. committed, or knowingly occasioned, or suffered by the said (*vendor*) or any other person or persons whomsoever.

*Production of
Title Deeds.*

Proviso as to
title deeds
where vendor is
tenant for life,
trustee, &c.

Sometimes the following proviso is added to the covenant for the production of title deeds, particularly where such covenant is entered into by a trustee, tenant for life, or other person who has but a partial interest in the land.

“**PROVIDED ALWAYS,** and it is hereby agreed and declared by and between the said (*vendor*) and (*purchaser*) that upon every such delivery or production of the said deeds, evidences, and writings, or any of them as aforesaid, if the same shall be delivered out of the custody or possession of the said (*vendor*) his counsel or solicitor, the said (*purchaser*) his heirs or assigns, shall and will, if thereunto required, sign and deliver to the said (*vendor*), his heirs and assigns, and he and they are hereby declared to be intitled to an express and particular acknowledgment, or receipt in writing, under the hand or respective hands of the said (*purchaser*), his heirs or assigns, for such of the said deeds, writings, and evidences, as shall be so produced or delivered; and in which said receipt or acknowledgment there shall be contained a sufficient and satisfactory undertaking for the redelivery of the said deeds and evidences unto the said (*vendor*), his heirs or assigns, when and as soon as the same shall have been used for the purposes aforesaid, whole, uncanceled, and undefaced (damage by fire or other unavoidable accident only excepted) (1).”

Vendor not in
possession of
title deeds, but
having a cove-
nant to produce.

And where a vendor who is not in possession of the title deeds, but himself took a covenant for their production, sells a part only of the land, and retains his own purchase deed in which such covenant is contained, Mr. Fearne (see *Posth. Wks.* 110), held that the purchaser might require the vendor to enter into a general covenant for the production of title deeds similar to that which he received from his vendor (and see *Napper v. Allington*, 1 *Eq. Ca. Ab.* 166. pl. 4.) in which case he recommends a qualification to be added to the vendor's covenant to the following effect :

(1) And vide *Shep. Prec. Prec.* 125.

“ PROVIDED ALWAYS, and it is hereby declared and agreed by and between the said parties hereto, that if any claim or demand be made by the said (*purchaser*), his heirs or assigns, upon the said (*vendor*), his heirs, executors, or administrators, under, or by virtue of the covenants hereinbefore contained on his or their part for quiet enjoyment, against the acts of the said (*former or last vendor*) or under or by virtue of the covenant entered into by the said (*present vendor*) for producing the title deeds comprised in the schedule hereunto annexed, and the said (*vendor*), his heirs, executors, or administrators, shall and do produce and deliver to the said (*purchaser*), his heirs or assigns, the said hereinbefore in part recited indenture of release, mentioned to bear date the day of , in order to enable the said (*purchaser*), his heirs or assigns, to avail himself or themselves of the covenants therein contained, on the part of the said (*former vendor*), and do and shall make and concur in any act or deed which may be requisite for enforcing the performance of any of such covenants, for or obtaining the production of the said title deeds, or any of them, against the said (*former vendor*), his heirs, executors, or administrators, or for obtaining damages for any breach of any of the covenants contained in the said indenture respecting the lands so purchased, and hereinbefore mentioned to be conveyed to the said (*purchaser*), or for indemnifying him, his heirs, or assigns, in respect of any such breach of covenant by the said (*former vendor*), that then and in such case the said (*purchaser*), his heirs, or assigns, shall not nor will commence any action, suit, or other proceeding against the said (*present vendor*), his heirs, executors, or administrators, upon, under, or by reason of the covenants so by him entered into with the said (*purchaser*) as aforesaid, for quiet enjoyment (against the acts of the said (*former vendor*) or his ancestors, so far as respects any such acts or deeds only, and not the acts or deeds of the said (*present vendor*) or any person or persons claiming under him;) or upon or by virtue of the said covenant entered into by the said (*vendor*) for the production of the title deeds covenanted

PURCHASES.

Production of
Title Deeds.

PURCHASES.

*Production of
Title Deeds.*

to be produced by the said (*former vendor*); and that the said (*present vendor*), his heirs, executors, or administrators, shall not, in such case, be liable to any costs, charges, or expenses, for or in respect of any acts or deeds of the said (*former vendor*) or his ancestors, for or in respect of the non-production of the title deeds specified in the covenant from him the said (*former vendor*)."

But as a covenant by the vendor for the production of the title deeds in his custody will necessarily include that for the production of them which he received from his vendor, and will entitle the purchaser to the benefit of it, the mode recommended by Mr. Fearne is not generally adopted in practice.

Purchaser of a
smaller lot.

Where a small part only of the estate is sold to the present purchaser, and the title deeds are reserved for the purchaser of the largest lot, or portion of the same estate, the following proviso may be added for exonerating the vendor from his covenant on his procuring a future or larger purchaser to enter into a similar covenant. Where, however, such largest purchaser has delivered to him, only the deed of covenant which the vendor himself had delivered to him on his own purchase (with the conveyance to such vendor), his covenant for production is usually made to extend to those particular deeds only; these being the only deeds in his possession, or which can be procured without suit or action, and as such largest purchaser has no interest in the estates conveyed to the other purchasers, this case differs from that where the deeds remain in the hands of the vendor, who receiving the value of the estate sold, ought to bear the onus of sustaining the title of his grantee; but in order the better to enable the vendor to avail himself of this proviso, it will be more convenient that the covenant be by separate instrument, see *ante*, p. 183, note.

Proviso for
exonerating the
vendor from his
covenant for
production of
title deeds.

"PROVIDED ALWAYS, and it is hereby agreed and declared, between and by the said parties to these presents, that if the said (*vendor*), his heirs or assigns, shall at any time hereafter sell or otherwise absolutely dispose of other his said lands or hereditaments of greater value than those now conveyed to the said (*purchaser*), and do and shall procure the purchaser or purchasers thereof, to enter into a like covenant to that which is hereinbefore contained, with the said (*purchaser*), his heirs and assigns, for the production of

the said deeds, evidences, and writings, to him and them ; then and in that case, but not otherwise, the covenants and agreements hereinbefore contained for that purpose, shall from thenceforth cease and be void, and at the request in writing and expense of the said (*tendor*), his heirs, executors, or administrators, shall be released, annulled, and extinguished in such manner as he or they shall reasonably require, any thing herein contained to the contrary thereof in any wise notwithstanding."

PURCHASES.

*Production of
Title Deeds.*

PURCHASES.

*Bargain and
sale to be
enrolled.*

(E) *Form of a Bargain and Sale to be enrolled, to accompany the preceding conveyance by lease or release (1).*

THIS INDENTURE of parts, made the day of in the year of our Lord , BETWEEN (*the vendor*) of, &c. of the one part, and (*the purchaser*) of, &c. of the other part, WITNESSETH, that in consideration of the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, of English value and currency, to the said (*vendor*) in hand well and truly paid by the said (*purchaser*) at or immediately before the sealing and delivery of these presents, the receipt whereof, and that the same is in full for the absolute purchase of the inheritance in fee-simple in possession of the messuages, lands, tenements, and hereditaments hereinafter described, the said (*vendor*) doth hereby expressly acknowledge, He the said (*vendor*) HATH granted, bargained, and sold, and by these presents DOTH grant, bargain, sell, and confirm unto the said (*purchaser*) and his heirs, ALL, &c. (*insert parcels from the deed of conveyance*) or howsoever otherwise the said messuages, lands, tenements, and hereditaments, or any part thereof, now are, or is, or heretofore were or was situated, tenanted, called, known, or described, Together with all outhouses, buildings, yards, cellars, vaults, areas, benefit and advantage of ancient and other lights, ways, water-courses, rights and privileges of common of every kind, and all and all manner of other rights, privileges, easements, appendages, and appurtenances whatsoever to the said hereditaments, and premises, or any part thereof belonging, or in anywise appertaining, or reputed or deemed so to be, or with the same or any of them, now or heretofore holden, used, occupied, or enjoyed. And the rents, issues, profits, and proceeds thereof to arise or become payable from the

(1) See ante, No. XVI. p. 171, n. (9).

day of last past: and all the estate, right, title, interest, property, claim, and demand whatsoever, of him the said (*vendor*) in, to, or respecting the said hereditaments, and premises, or any part thereof. TO HAVE AND TO HOLD, the said messuages, lands, tenements, and hereditaments, with their and every of their rights, members, and appurtenances, and all and singular other the premises hereinbefore granted, bargained, and sold, or otherwise assured, or intended so to be, unto and to and for the use and behoof of the said (*purchaser*) his heirs and assigns for ever. IN WITNESS, &c.

PURCHASES.

*Bargain and
sale to be
enrolled.*

Besides the variations subjoined to the last precedent, the particular state of a title, the subject matter of the assurance, or the objects of the parties, may occasionally render many others proper to be introduced, as,

Where the vendor is entitled to a moiety, third, or other undivided part of the premises.

Where he is entitled in reversion after the determination of some particular estate.

Where to an equity of redemption only.

Where part of the premises are copyhold or leasehold.

Where they were limited to the vendor to uses to prevent dower.

Where the purchaser is desirous of having them limited to him for the like purpose.

Where a part of the purchase money is to remain on the estate.

Where the title renders a fine or a recovery necessary.

Where there is an outstanding satisfied term, &c.

But for these distinct and separate precedents will be given. There are others, however, which, though not of such every day's occurrence, are nevertheless found, in an extensive practice, to be often called for. Some of these, therefore, I shall here introduce, for the purpose of their being hereafter referred to for insertion where circumstances may require it.

PURCHASES.

*Life Annuity
secured to
Vendor.*

(F) Variation *where the Conveyance is in consideration of a Life Annuity, secured to the Vendor, or to him and his Wife.*

Where vendors are much in years and of straitened income, it is not unusual for them on the sale of an estate to agree for the payment to them of an annuity for their lives instead of a sum in gross, in which case the following additions and variations will be requisite in the conveyance, and will be referred to from the proper places in the ensuing precedents.

AND WHEREAS the said (*vendor*) hath contracted with the said (*purchaser*) for the sale to him of the said messuage and hereditaments, in consideration of an annuity or clear yearly sum of £ to be paid to him by the said (*purchaser*) during his life, and (*if the case be so*) to the said

his wife, if she shall survive him: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and for securing the payment of the said annuity or yearly sum to the said (*vendor*) during his life, [and to the said

his wife, during her life if she shall survive him (*if the case be so*)] ; and in consideration of £ of good and lawful money, &c. to the said (*vendor*) in hand paid by the said (*purchaser*) at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged ; and for conveying and assuring the said messuage and hereditaments with their appurtenances, to and for the uses, intents, and purposes hereinafter declared or expressed concerning the same ; HE, the said (*vendor*), HATH granted, bargained, sold, aliened, and released, and by these presents DOth grant, &c. unto the said (*purchaser*) and his heirs (*or a trustee if the case require it*), ALL, &c. and the reversion, &c. in his actual possession, &c. TO HAVE AND TO HOLD the same messuage, &c. and other the hereditaments and premises hereinbefore granted and released, or intended so to be, with their and every of their appurtenances unto the said (*purchaser*) or (*trustee*) and his heirs, to the uses, intents, and purposes, and with, under, and subject to the powers, declarations, and agreements

hereinafter expressed, that is to say, to the use, intent, and purpose that the said (*vendor*) shall and may have, receive, and take out of and from the said messuage, hereditaments, and premises, and every or any part thereof, yearly and every year during the term of his natural life, one annuity or yearly sum of £ of good and lawful money of Great Britain current in England, free and clear of and from all and every deduction and abatement, and deductions and abatements for any cause, matter, or thing whatsoever; [and to the further use, intent, and purpose that the said the wife of the said (*vendor*) in case she shall survive him, may have, receive, and take out of and from the same messuage, hereditaments, and premises, and every or any part thereof, yearly and every year during the then remainder of the term of her natural life, one other like annuity or yearly sum of £ of lawful current money aforesaid]; which said annuity or yearly sum, [or which said annuities or yearly sums] shall be and is [or are] charged and chargeable upon, and shall be yearly and every year issuing and payable out of and from the said messuage, hereditaments, &c. and premises, and every part thereof, by four equal quarterly payments, on the feasts and days hereinafter mentioned, that is to say, the feast of, &c. &c. in each year, without any deduction or abatement whatsoever, as aforesaid, the first quarterly payment of the said annuity or yearly sum of £ to be made to the said (*vendor*) on the feast of, &c. next ensuing the date of these presents; [and the first quarterly payment of the said annuity or yearly sum of £ to be made to the said the wife of the said (*vendor*) in case she shall survive him, on such of the said feast days which shall first happen after the decease of the said (*vendor*)] together with a portional part of the same annuity [or respective annuities] up to the day of the decease of him the said (*vendor*) [or of the respective deceases of them the said (*vendor*) and the said his wife him surviving]; *add power of distress and entry in case of non-payment, as in other grants of life annuities, which see post, vol. IV, No. II.*; and subject to, and charged and chargeable with the said annuity or yearly sum, [or respective annuities or yearly

PURCHASES.

*Life Annuity
secured to
Vendor.*

PURCHASES.

*Life Annuity
secured to
Vendor.*

sums] and the powers and remedies hereinbefore given and provided for obtaining and recovering payment thereof, to the use of the said (*purchaser*), his heirs and assigns for ever; (*if the vendor's wife have title to dower in the premises, add covenant to levy a fine*, and declare that the same shall "enure to the uses, intents, and purposes hereinbefore expressed concerning the premises," *add usual covenants by vendor that he is seized in fee and has good right to convey, to the uses aforesaid*); and also that all and every the said messuage, hereditaments, and premises hereby granted and released, or otherwise assured, or intended so to be, with their and every of their appurtenances, shall from henceforth and at all times hereafter remain, continue, and be to and for the uses, intents, and purposes, and with, under, and subject to the powers, declarations, and agreements hereinbefore declared or expressed concerning the same, (*free from incumbrances and further assurance as in common purchase deeds*): And the said (*purchaser*) for himself, his heirs, executors, administrators, and assigns doth hereby covenant, promise, and agree, to and with the said (*vendor*) and his assigns in the manner following, that is to say, that he the said (*purchaser*), his heirs, executors, administrators, and assigns, shall and will well and truly pay or cause to be paid unto the said (*vendor*) and his assigns, yearly and every year during his life, the said annuity or yearly sum of £ at or on the feasts or days and in the manner hereinbefore appointed or mentioned for payment thereof, [and also shall and will well and truly pay or cause to be paid unto the said , the wife of the said (*vendor*), yearly and every year during her life, if she shall survive the said (*vendor*) her husband, the said annuity or yearly sum of £ at or on the feasts or days and in the manner hereinbefore appointed or mentioned for payment of the same (with such proportional parts of the same annuities respectively as aforesaid), according to the true intent and meaning of these presents. IN WITNESS, &c.

PURCHASES.

(G) *Covenant to get in and convey to the Purchaser an outstanding legal Fee* (1).

Covenant to get in an outstanding legal fee.

AND WHEREAS the legal estate of inheritance in the piece or parcel of land expressed or intended to be hereinbefore granted and released, and called the _____, appears to be outstanding in the heir at law of the surviving devisee in trust, named in the last will and testament of the said deceased: And whereas such heir at law cannot at present be found, and it has therefore been agreed that the said (*vendor*) should enter into such covenant in relation thereto as hereinafter is expressed: Now this indenture further witnesseth, that in pursuance of this said agreement, and in consideration of the said sum of £ _____ so paid to the said (*vendor*) by the said (*purchaser*) as aforesaid, He the said (*vendor*) for himself, his heirs, executors, administrators, and assigns, doth hereby covenant, promise, and agree with and to the said (*purchaser*), his heirs, executors, administrators, and assigns, That he the said (*vendor*), his heirs, executors, administrators, or assigns, shall and will within the space of six calendar months from the day of the date of these presents, at his or their own costs and charges, cause or procure the person or persons in whom as the legal estate in fee simple of the said piece or parcel of ground called the _____, as heir at law of the surviving devisee in trust named in the said will of the said deceased or otherwise, is now vested to convey and assure the same unto and to the use of the said (*purchaser*), his heirs and assigns for ever, and that until such conveyance and assurance shall be made, the person or persons in whom the said legal estate shall or may for the time being be vested, shall stand and be seised, possessed of, and interested in the same, in trust for the said (*purchaser*), his heirs and assigns, and to be from time to time conveyed and disposed of as he or they shall direct or appoint, and upon or for no other trust or purpose whatsoever. IN WITNESS, &c.

(1) This covenant should be inserted in the conveyance only where the outstanding estate is necessarily apparent on the face of the title, in other cases it should be by a separate instrument. The form of which will be found in the SUPPLEMENT of MISCELLANIES.

Separate deed.

PURCHASES.

*Covenant to get
in an outstanding
term.*

(H) *Covenant to get in and procure to be assigned to the Purchaser an outstanding satisfied Term (1).*

AND WHEREAS the trusts of the said term of years, created or raised by the said in part recited indenture of the day of have long since been fully executed or otherwise satisfied: And whereas on the treaty for the aforesaid purchase, it was agreed that the residue of the said term should be assigned to a trustee for the said (*purchaser*): But the said (*vendor*) being unable at present to ascertain in whom the same is now vested, the said (*purchaser*) has agreed to accept of such covenant for the assignment thereof, as hereinafter is expressed: Now therefore this indenture further witnesseth, that in consideration of the premises, the said (*vendor*) for himself, his heirs, executors, and administrators, doth hereby covenant, promise, declare, and agree with and to the said (*purchaser*), his heirs, executors, administrators, and assigns, that he the said (*vendor*), his heirs, executors, or administrators, shall and will at his and their own proper expense, within the space of twelve calendar months next ensuing the date of these presents, cause and procure the residue of the said term of years raised or granted in or by the said hereinbefore in part recited indenture as aforesaid, which shall be then to come, of and in so much and such parts of the premises therein comprised, as are hereinbefore mentioned, or intended to be hereby granted and released, to be legally and effectually assigned by the person or persons in whom the same residue shall appear to be vested or resident unto him the said (*purchaser*), his heirs, or assigns, or unto such other person or persons, and for such ends and purposes as he the said (*purchaser*), his heirs, or assigns shall nominate or appoint, and in the mean time to attend the reversion and inheritance of the same last mentioned premises, in order to protect the same from all mesne charges and incumbrances

(1) See *ante*, p. 209, n. (1).

(if any such there be): and the said (*vendor*), for himself, his heirs, executors, and administrators, doth hereby declare and agree to and with the said (*purchaser*), his heirs, and assigns, that in the mean time, and until such assignment as last hereinbefore mentioned shall be made, the person or persons in whom the residue for the time being of the said term is or may be vested shall henceforth for and during the now and then residue thereof, stand and be possessed of and interested in so much and such parts of the premises therein comprised as are hereinbefore mentioned, or intended to be by these presents granted and released as aforesaid, in trust for the said (*purchaser*), his heirs, and assigns, and to be assigned and disposed of as he or they shall direct or appoint, and in the mean time, and until such direction or appointment shall be made in trust to attend the reversion and inheritance of the said premises, in order to protect the same from all mesne charges and incumbrances (if any such there be), and upon or for no other trust, interest, or purpose whatsoever. And further, that in case no such assignment as aforesaid can be obtained within the said space of calendar months, he the (*vendor*), his heirs or assigns, will bear and pay all reasonable expenses attendant upon procuring letters of administration of or to the said term, to be granted to such person or persons, and for such ends and purposes as aforesaid. IN WITNESS, &c.

PURCHASES.

*Covenant to get
in an outstanding
term.*

PURCHASES.

Covenant to indemnify against a small fee-farm rent.

(I) *A Covenant to pay and indemnify against a Fee-farm or other rent, issuing out of the Premises sold with others.*

When there is a rent-charge riding over the whole of an estate sold in parcels, and it is intended to exonerate all but one lot from payment of it—if the party entitled to the rent is capable of barring his heirs, he may release all the lands from the rent and the powers incident to it, in consideration of having another equivalent rent secured *de novo* out of a part of the same lands. But if the party entitled to the rent cannot bar his heirs, the owner of the land may grant another equivalent, and original rent *de novo* out of the lands intended to be solely charged, to trustees to indemnify the purchaser; one trustee to be named by the vendor and the other by the purchaser, with power for each to name a new trustee on the death of his own trustee. The deed may be executed previously to the conveyance to the purchaser of the lot to be charged, which conveyance should recite the grant of rent to the trustees. But the purchaser covenants to pay the original rent, and declares that the lands purchased by him shall be charged as well with the rent now granted for indemnity as the original rent. A deed of this kind will be found in Mr. Wilde's Supplement of Miscellanies. But sometimes in small purchases, where the vendor is a man of property, or where the rent charge is of very small amount, the purchaser is satisfied with his covenant to pay and indemnify against such charge, in which case the following covenant may be added to the purchaser's conveyance.

AND WHEREAS, it was agreed upon the treaty for the said purchase that the said (*vendor*) should save the said (*purchaser*) harmless from the said fee-farm or other rent of chargeable upon the said lands or hereditaments: Now the said (*vendor*) for himself, his heirs, executors, and administrators, doth hereby covenant, declare, and agree with and to the said (*purchaser*), his heirs, executors, administrators, and assigns, in the manner following (that is to say) that he the said (*vendor*), his heirs, executors, administrators, or assigns, or some or one of them, shall and will from time to time well and truly pay or cause to be paid the said fee-

farm rent, or other rent or sum of £
 now charged or chargeable upon or issuing out of the said
 pieces or parcels of lands and hereditaments hereinbefore
 granted and released with others, as hereinbefore is mentioned,
 as and when the same shall grow or become due and pay-
 able; and also shall and will from time to time, and at all
 times hereafter, well and effectually save, defend, keep harm-
 less, and indemnify the said (*purchaser*), his heirs, exe-
 cutors, administrators, and assigns, and his and their goods
 and chattels, and lands and tenements, of, from, and against
 the same; and all actions, suits, proceedings, costs, charges,
 and expenses which shall or may be prosecuted, instituted,
 or incurred, or occasioned by reason of any default, delay,
 or omission in the payment thereof, or otherwise relative
 thereto (1).

SO PURCHASERS.

*Covenant to in-
 demnify against
 a small fee-farm
 rent.*

(1) If a proportional part of the rent issuing out of the premises sold, with
 others, is to be paid by the purchaser, and the rest by the vendor, see *post*, No.
 XXVI. Rider (A).

Part to be paid
 by vendor and
 part by pur-
 chaser.

PURCHASES.

Power of
re-purchase.

(J) *Proviso giving the Vendor the Privilege of re-purchasing the Premises within a stipulated time.*

PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties hereto, that in case the said (*vendor*), or his heirs shall, at, or at any time before the expiration of twelve calendar months, to be computed from the day of the date of these presents, be desirous to re-purchase the said messuages, closes of land, and hereditaments hereinbefore mentioned to be hereby released, and of such his or their desire shall give or cause to be given unto the said (*purchaser*), his heirs or assigns, three calendar months previous notice in writing, and shall at the end or expiration of such time or notice pay or cause to be paid unto the said (*purchaser*), his heirs or assigns, the sum of £ of lawful money of the said United Kingdom current in England, without any deduction or abatement whatsoever, and such further sum or sums of like lawful money as shall be agreed upon or awarded by two surveyors to be named and appointed, one of them by and on behalf of each of the said (*vendor*) and (*purchaser*), respectively, their respective heirs or assigns, and one other or third person, to be named by such two surveyors in case of difference between them, for and in respect of any necessary repairs which the said (*purchaser*), his heirs or assigns, shall have caused to have been made or done upon or to the said premises, or any part thereof, during his or their possession thereof; then and in such case, or at any time thereafter, the said (*purchaser*) shall and will at the request, costs, and charges of the said (*vendor*), or his heirs, re-convey to him or them, or as he or they shall order and direct, the said messuages, closes of lands and hereditaments hereby released or intended so to be, and every part thereof according to their respective natures or legal qualities, free from all incumbrances, to be made, done, committed, or suffered by the said (*purchaser*), his heirs or assigns, in the mean time; but if the said (*vendor*), or his heirs, shall not within the

said period of twelve calendar months give such notice as aforesaid of his or their desire to re-purchase the said premises, or having given it, shall make default in payment of the aforesaid sum of £ or any part thereof, contrary to such notice, then and in such case, and from thenceforth, the estate, right, title, and interest of the said (*purchaser*), his heirs and assigns, in, of, and to the said messuages, closes of land and hereditaments hereby released, or intended so to be, shall be absolute and indefeasible, as well in equity as in law; and the said (*vendor*) and his heirs shall be for ever debarred from all right and benefit of re-purchase as well in equity as at law; and the said (*vendor*) for himself, his heirs, executors, administrators, and assigns, doth hereby covenant, promise, and declare, to and with the said (*purchaser*), his heirs, executors, administrators, and assigns, that if no such notice for the re-purchase of the said premises as aforesaid, shall be given by the said (*vendor*), or his heirs, within the said space of twelve calendar months; he the said (*vendor*), and his heirs, shall and will upon the reasonable request, and at the costs and charges in the law of the said (*purchaser*), his heirs or assigns, make and execute unto him and them all such release or other assurance of his or their right, title, and interest both at law and in equity, of, in, and to the said premises, and every part thereof, under or by virtue of the proviso or covenant lastly hereinbefore contained, as by him the said (*purchaser*), his heirs or assigns, or his or their counsel in the law, shall be reasonably required. Provided always, and it is hereby declared and agreed by and between the parties hereto, that these presents are not intended to be, nor shall the same by reason of any matter or thing herein contained be taken, or construed to be in the nature of a mortgage or security for the said sum of £ as if the same had been lent or advanced by the said (*purchaser*), neither shall the said (*vendor*), his heirs, executors, administrators, or assigns, be in anywise accountable to the said (*purchaser*) for interest in respect of the said sum, or any part thereof; nor shall the said (*purchaser*), his executors, administrators, or assigns, or any or either of them, be in any wise accountable unto the said

PURCHASES.

*Power of
re-purchase.*

PURCHASES.

*Power of
repurchase.*

(*vendor*), his heirs, executors, administrators, or assigns, for the rents or profits of the said premises or any part thereof, in case of any such repurchase being made as aforesaid, it being the true intent and meaning of the said parties, that the said sum of £ , so expressed to be paid by the said (*purchaser*) to the said (*vendor*), at or immediately before the sealing and delivery of these presents, was so paid as and for the full and true value and absolute purchase for the said premises, and the fee simple and inheritance thereof, subject only to such option or privilege of repurchase on the part of the said (*vendor*), his heirs, or assigns, as hereinbefore is expressed. IN WITNESS, &c.

PURCHASES.

*Privilege of
Preemption.*

(K) *Proviso giving the Vendor the privilege of Preemption in case of a re-sale.*

AND WHEREAS it has been agreed between the said (*vendor*) and (*purchaser*), that in case the said (*purchaser*) shall be desirous of disposing of the said premises, the said (*vendor*) shall have the privilege of purchasing the same in preference to any other person upon the terms hereinafter mentioned. NOW THIS INDENTURE further witnesseth, that in pursuance of the said agreement, the said (*purchaser*), for himself, his heirs, executors, and administrators doth hereby covenant, grant, declare, and agree, with and to the said (*vendor*), his heirs and assigns, in the manner following (that is to say): that in case the said (*purchaser*), his heirs, or assigns, shall at any time hereafter be desirous of selling or disposing (other than by will) of the hereditaments and premises hereinbefore conveyed to him, or intended so to be as aforesaid, or of any part thereof: He or they shall and will, before any such sale, or disposition, or contract or agreement for any such sale or disposition, shall be made or entered into, give or cause to be given to the said (*vendor*), his heirs, or assigns, one calendar month's notice in writing under his or their hand or respective hands, of his or their wish or intention to sell or dispose of the same, and the price or sum demanded or required for the same, at which said price or sum the said (*vendor*), his heirs, or assigns, shall be at liberty at any time within the space of one calendar month next thereafter, to become the purchaser thereof in preference to and before any other person or persons whomsoever; and upon payment of the said sum by the said (*vendor*), his heirs, or assigns, he the said (*purchaser*), at the costs and charges of the said (*vendor*), his heirs or assigns, shall and will sign, seal, and deliver all such deeds, conveyances, and assurances, and do or procure to be done all such other acts,

PURCHASES. matters, and things as the said (*vendor*), his heirs, or assigns, or his or their counsel in the law (being of the degree of a barrister) shall require or advise for the purpose of vesting the same in him or them, free from all incumbrances by him the said (*purchaser*), his heirs or assigns, or any person or persons claiming under him or them, committed or knowingly suffered.

*Privilege of
Preemption.*

PURCHASES.

No. XVII.

Feoffment.

Conveyance of a Messuage, &c. from a Vendor to a Purchaser by Feoffment (1), with Warranty of Title.

Variations where the Feoffment is by a Corporation (2).

Where by a Vendor and his Wife.

Where to a Trustee to prevent Dower.

Where Covenants for the Title are inserted instead of a Warranty.

Where Livery of Seisin is made or taken by Attorney, &c. &c.

THIS INDENTURE of parts, made the
day of , [in the year, &c. and]

(1) A deed of feoffment, on account of its forceable nature in restoring seisin, barring future uses, &c. was formerly in very common use, and it might still be had recourse to, under particular circumstances of title, with great advantage, as has been attempted to be shown in the accompanying work, See Elem. Conv. vol. iv. ch. I. and *post*, p. 220, n. (1). Hence I have been induced to insert here the form of this assurance. But as either of the conveyances by lease and release to purchasers of corporeal property, contained in these volumes, may be converted into a feoffment, simply by using the operative words of feoffment, and omitting the reference to the bargain and sale for a year, I have not thought it requisite to insert any greater variety of forms than may be framed from the subjoined variations.

See as to the nature and operation of a feoffment, and in what cases it is the most proper assurance, 4 Elem. Conv. 2d Ed. c. I. Also Wilde's Supplement, vol. ii. p. 36, n. (1). Generally speaking, this species of conveyance is more particularly eligible for assuring to the purchaser lands which have been recently allotted under an enclosure act, where the actual state of the title of the former owner is often very uncertain, and impossible to be obtained.

(2) As the prevailing opinion is, that corporations (par- Corporations aggregate not

PURCHASES. in the year of our Lord BETWEEN (*the ven-*
dor) (1) of, &c. (2) of the one part; and (*the*

Feoffment.

capable of seisin to uses. Must convey by feoffment or release founded on a common law lease and entry.

Infants, &c. may enfeoff.

ticularly aggregate) cannot be seised to an use, Brook, "Uses," pl. 10. Gilb. Us. 5. Bac. Us. 57, 347. Co. Lit. 271. b. n. (1). they are usually made to convey either by feoffment, or by *lease at common law* followed by actual entry by the lessee and a *release* thereupon. Variations will be found here subjoined and adapted to the first of these cases—the other has been noticed in a preceding page, See *ante*, p. 174. n. (15).

(1) A feoffment may be made by idiots or lunatics, and will, if made in person, bind them and all claiming by privity of estate only, because, being formerly made before the *pares curiæ*, it was presumed they were competent judges of the capacity of the feoffor, Lit. s. 48. Whittingham's case, 8 Co. 42. 4. *ib.* 125. a. but it will not be binding upon the heir who is privy in blood only, nor will it be binding at all, unless made by the idiot or lunatic in person, 4 Co. 25.

If the feoffment be by a corporation, it must be described by its aggregate character, as named in its charter of incorporation; as

"Between the mayor, commonalty, and citizens of London," &c.

as the case may be, and so named throughout the deed, and not by the name of its individual head or principals.—This is to be attended to not only for correctness' sake, but to prevent the determination of the authority of the attorney appointed to deliver seisin, by the death of any of those heads or principals before its execution.

Wife.

If the wife of the vendor be entitled to dower, say,

"(*The vendor*), of, &c. and his wife."

Dower.

(2) If the feoffment be intended to be made to a trustee to prevent dower, say,

"And (*the trustee*), of, &c. a trustee named and appointed by and on the behalf of the said (*purchaser*) for the purposes hereinafter mentioned, of the third part."

Attorney for delivery of seisin must be appointed by deed.

If the delivery of seisin or possession be not made or taken by the vendor or purchaser in person, an attorney must be appointed by deed for this purpose, but the appointment may be either by a separate instrument or (which is more usual) by the deed of feoffment itself; and, according to Lord Coke, when the

purchaser) of, &c. of the other part. **PURCHASES.**

WHEREAS the said (*vendor*) being seised in his demesne as of fee of the lands and hereditaments hereinafter described (1), hath contracted with the said (*purchaser*) for the sale (2) to him thereof, at the sum of £ (3), and hath requested that the same may now be enfeoffed and conveyed to him (4) in the manner hereinafter expressed. Now THIS INDENTURE WITNESSETH, that for and in con-

Feoffment.

attorney is appointed by the deed of feoffment, and the feoffment is by indenture, it is essential that the attorney should be a party to the deed, although not so if the feoffment be by deed poll—vide 1 Inst. 52, but this distinction is not attended to in practice, nor does it seem essential that it should be, see *Male v Ewer*, Cro. Eliz. 905. *Dicker v. Rowland*, 2 Roll. Abr. 8. pl. 12. There is a propriety however in it, because, where he is appointed by the deed, he should have one part of it in order to enable him to pursue his authority according to the terms of the deed.

(1) Or the recital may be,

“ WHEREAS by indenture of feoffment bearing date on or about the day of which was in the year , and made or expressed to be made, between &c. of the one part, and the said (*vendor*) of the other part, and by livery of seisin made according to the form and effect thereof (a memorandum whereof is thereupon indorsed), the messuages, lands, tenements, and hereditaments hereinafter described were enfeoffed and conveyed unto and to the use of the said (*vendor*) his heirs and assigns for ever.”

(2) If the estate was sold by public auction, make the recital of the contract, and of the payment of the purchase money, conformably to No. XVI. p. 163. n. (4). **Sale by auction.**

(3) If the consideration was otherwise than for money paid, see *ante*, No. XVI. p. 165. n. (6), and 167, n. (8). **Consideration.**

(4) If the conveyance be made to a trustee to prevent dower, say, **Dower.**

“ And the said (*purchaser*) hath requested that the same may be conveyed to him to the uses and for the purposes hereinafter expressed.”

PURCHASES.

Feoffment.

WITNESS, that
in consideration
of the purchase
money.

The vendor
grants, enfeoffs,
&c.

sideration (1) of the sum of £ (2) of lawful money of the United Kingdom of Great Britain and Ireland, of English value and currency to the said (*vendor*) in hand well and truly paid by the said (*purchaser*) at or immediately before the sealing and delivery of these presents (the receipt whereof, and that the same is in full for the absolute purchase of the inheritance in fee-simple, in possession, of the messuages, lands, and hereditaments hereinafter described, the said (*vendor*) doth hereby expressly acknowledge). He (3), the said (*vendor*) HATH given (4), granted, and enfeoffed (5); and by these presents DOTH,

Feoffment will
vest the use in
the feoffee with-
out consider-
ation.

(1) As a feoffment operates by transmutation of possession, it will, as against the vendor, vest the inheritance in the purchaser and his heirs (if so limited), although no consideration be paid, see Anders. 37. pl. 95; but without a consideration it would be void against creditors, see Pillans et al. v. Meiropp, 3 Bur. 1670, and also *ante*, No. XV. p. 123. n. (5).

Consideration.

(2) If the consideration be paid otherwise than in money, or at any other time than at the execution of the conveyance, see the variations subjoined to No. XVI. p. 167. n. (8).

Wife party.

(3) If the wife of the vendor be a party, say,

“ They the said (*vendor*) and his wife HAVE and each of them HATH given, granted, and enfeoffed, and by these presents DO, and each of them DOTH,” &c. *as above*.

Corporation.

If the conveyance be by a corporation, say,

“ They the said mayor, commonalty, and citizens, HAVE given, granted, and enfeoffed, and by these presents DO give,” &c. *as above*.

Dedi imports a
warranty by stat.
de bigamis.

(4) By the statute de Bigamis, c. 6. it is expressly declared, that the word *dedi* shall import a warranty, and see Nokes Ca. 4 Co. 81. But as this warranty is only during the life of the feoffor, Co. Lit. 384. a. whilst the express warranty binds the heirs, Co. Lit. 265. a, the clause of warranty hereafter subjoined, is not to be therefore omitted.

“ Enfeoff ”
“ give.”

(5) The word “ enfeoff ” is the technical and operative word in this species of conveyance; the word “ give ” was inserted on

give, grant, enfeoff, and confirm unto the said **PURCHASES.**
(purchaser) and his heirs, ALL, &c. (1) or how-
 ever otherwise the said messuages, lands, tene-
 ments, and hereditaments, or any part thereof, now
 are, or is, or heretofore were or was situated, te-
 nanted, called, known, or described; [together with
 all out-houses, buildings, yards, cellars, vaults,
 areas, benefit, and advantage of ancient and other
 lights (2), ways, watercourses, rights and privileges
 of common of every kind, and all and singular other
 rights, privileges, advantages, and appurtenances
 whatsoever to the said hereditaments, and pre-
 mises, or any part thereof belonging, or in any
 wise appertaining, or with the same or any part

Feoffment.

 Parcels and ge-
 neral words.

account of its implying before the statute *quia emptores*, a war-
 ranty of title against the feoffor and his heirs, and see p. 222,
 n. (4).

The word "grant" is used with a view of passing such of "Grant," &c.
 the hereditaments comprised in the feoffment as are incapable,
 from their nature, of being made the subject of livery, and are not
 strictly appurtenances to the land, and see *ante*, No. XV. p. 127,
 n. (11). The words "bargained and sold," are also sometimes
 superadded in modern feoffments; but as a feoffment and bargain
 and sale cannot be made at the same time, of the same land, on
 account of the opposite natures of those conveyances, and as the
 insertion of these words has a tendency to confound this species
 of deed with that of a feoffment, to which it is totally dissimilar,
 they seem to be improper—and see No. XV. p. 127. n. (11).

(1) Here describe the land, &c. by the present name, te- Description of
 nantcy, boundary, &c. at the same time referring to the antient parcels.
 description, if any alterations have recently taken place by
 buildings, inclosures, &c.—and state whether they are under any
 and what tenantcy at the time—and see *ante* No. XV. p. 128.
 n. (13), and note from the parcels in No. XXVII.

(2) For general words applicable to different species of pro- General words.
 perty—see No. XVI. p. 173. n. (14), and INDEX, *voc.* GENERAL
 WORDS.

PURCHASES. thereof, now or heretofore holden, used, occupied, or enjoyed]; and the reversion and reversions, remainder and remainders (1) of and in the said hereditaments and premises, and the rents, issues, and proceeds thereof, to arise or become payable from the day of now last past; and all the estate, right, title, interest, property, claim and demand whatsoever, of him the said (*vendor*) (2) in, to, or respecting the said hereditaments, and premises, or any part thereof. (*Add grant of title deeds* (3) *and attested copies as in No. XVI. p. 175.*) To HAVE AND TO HOLD the said messuages, lands, tenements, and hereditaments, with their and every of their rights, members, and appurtenances, and all and singular other the premises hereinbefore granted, enfeoffed, and confirmed, or otherwise assured, or intended so to be, unto (4) the said (*purchaser*) his heirs and assigns, to and for the use and

Reversions or other incorporeal hereditaments cannot pass by feoffment.

(1) As reversions, remainders, rents, and other incorporeal hereditaments, incapable of livery, cannot be made to pass by feoffment, these words are sometimes omitted—see *Sand. Us. and Tr.* 97. They are sometimes also granted separately and apart from the words of feoffment by applying to the possession, see 1 *Bridgm. Conv.* 23. 264 —and see also *Wilde's Supplement*, vol. ii. p. 38. n. (6). But they seem proper to be retained, as there may be a prior particular estate subsisting, which may give effect to the deed as a conveyance of the reversion by the word *grant*.

Wife party.

(2) If the wife of the vendor be a party, add,
“ And of his wife.”

Title deeds.

(3) If the vendor enter into a warranty of the title, an express grant of the title deeds will be more particularly necessary, see *ante*, No. XV. p. 134. n. (26).

Dower.

(4) If the conveyance be intended to be made to a trustee to prevent dower, insert the limitation given, *post*, No. XXVII.

behoof of him the said (*purchaser*) his heirs and assigns, henceforth (1) and for ever (2). AND the said (*vendor*) (3) doth hereby grant for himself and his heirs (4), that he and they shall and will

PURCHASES.

Feoffment.

(1) As the operation of a feoffment is to give immediate possession, the estate granted by it must commence immediately, and not *in futuro*, Co. Lit. 217. a. 2 Wils. 166. But limitations in remainder may, nevertheless, be created by a feoffment, to commence on the determination of the preceding estate, Lit. s. 60.

Feoffment must commence in presenti.

(2) If the wife of the vendor be a party, add here a covenant to levy a fine. For the form of which, see *post*, No. XXXI.— and so if a fine be considered necessary to operate as a bar, by non-claim under the stat. 4 Hen. 7. c. 24. See 4 Elem. Conv. 2d Ed. Wilde's Sup. Tit. FINE.

Wife.

If it is intended that the vendor should enter into covenants for the title instead of a warranty, insert them here. The form of these covenants will be similar to those given, *ante*, No. XV. p. 138, or No. XVI. p. 177.

Covenants for the title instead of a warranty.

(3) A warranty does not bind the heirs unless they are expressly named, see Co. Lit. 47, a. 384, b. 385, b.

Warranty not binding on heirs.

If the feoffment be by a corporate body, the word "successors" must be used instead of the word "heirs" throughout the deed, unless the corporation have an aggregate style or denomination of "company;" as "the Highgate Archway Company," or the like, in which case the word "successors" is improper, and should be omitted, as there can be no successors to the *company*, although there may be to the persons, as the "mayor and commonalty" or the like, who compose the company.

Corporation.

(4) If the wife of the vendor be a party, and it be his estate, say, "AND the said (*vendor*) and his wife for themselves and the heirs of the said (*vendor*)."

Wife.

If it be the wife's estate, say,

"AND the said (*vendor*) and his wife for themselves and the heirs of the said (*wife*)."

If there be two feoffors, the warranty must be severally from each and his heirs, or jointly from both, and first the heirs of one

Two feoffors.

PURCHASES. warrant (1), and for ever defend, unto and to the use of the said (*purchaser*) his heirs and assigns, all and every the said messuages, lands, tenements, hereditaments and premises, against him the said (*vendor*) and his heirs, and against all

Feoffment.

Fine.

of them, and then the heirs of the other, for a warranty cannot be from two and *their* heirs. See **FINE** in the **SUPPLEMENT**, and 2 Co. 74. b.

Since the stat. *quia emptores* the warranty implied by the word *dedi* binds the feoffor only, and not his heirs.

(1) Before the statute of *quia emptores* (18 Ed. 1.) the word *dedi* or "given," used as one of the operative words in a deed of feoffment, implied a warranty, which bound the feoffor and his heirs in respect of the services rendered by the grant; but as since that statute the ancient services incident to the tenure result back to the lord of the fee, the implied warranty annexed to the grant by virtue of this word, is binding upon the feoffor only, and not his heirs, Co. Lit. 384. a.; hence, where the warranty is required to extend to the heirs of the feoffor, it is requisite to add an express warranty for that purpose, see Lit. s. 773. Co. Lit. 47. a. 383. b. But as a warranty will in no case be binding on any other than the feoffor and his heirs, whilst the covenants for the title, usually inserted in conveyances, are made to extend to the executors and administrators also of the covenantor, and therefore bind his personal as well as real assets, these are frequently inserted in a deed of feoffment instead of the clause of warranty. In some cases, however, as where there is reason to suspect that the land is affected by latent entails in remainder, or the like, it may be proper to add a warranty in addition to these covenants, with a view to its operating as a bar to those estates in the event of no assets descending from the warrantor; for it has been shown in another place (see 4 Elem. Conv. c. 1.) that although lineal warranty descending upon the issue of the warrantor, will be no bar without assets actually descending, yet that a collateral warranty (and such is that which descends on a remainder man or reversioner) will bar without assets.—The form of these covenants for the title will be the same as those used in other species of assurances; see *ante*, p. 138. 177. observing to make them limited or qualified conformably to the warranty. See *ante*, p. 140. n. (38.), and the next page, n. (1).

Warranty binds the real representatives only of the feoffor.

Lineal warranty binds the heir only so far as assets descend to him.

Collateral warranty binds the collateral heir without assets.

and every other person and persons whomsoever (1). IN WITNESS whereof, the said parties

PURCHASERS.

Feoffment.

(1) If the warranty of the vendor is intended to be confined to the acts of himself and his ancestors, and not extended, as in some cases it is, to all persons in general, say,

Limited warranty.

“ Against him the said (*vendor*), and his heirs, and against all and every person and persons now or hereafter lawfully or equitably entitled to the said hereditaments and premises, or any part thereof, or any estate or interest therein, from, through, under, or in trust for him, them, or any of them, or any of the ancestors of the said (*vendor*), or by or through their or any or either of their default, means, or procurement.”

It is necessary to the validity of a feoffment, that livery of the land should be made by the feoffor to the feoffee, till which the assurance is incomplete. This livery may, however, in general be made as well by attorney as in person, Co. Lit. 48. b.

Livery of seisin is necessary to perfect a feoffment.

But it is to be noticed, that seisin can be delivered by attorney only where the feoffor is *sui juris*; for if the feoffor be an infant, feme covert, or the like, livery should be made by him or her in person; for an attorney cannot be constituted but by *deed*, which these persons are incapable of making, *Zouch v. Parsons*, 3 Burr. 1801; any act therefore done by the attorney in pursuance of such authority will be void, whilst livery made in person will be good until avoided by entry, see *Perk. s. 12*. Livery, by attorney, whether given or received, must also be by deed, that it may appear that the authority was complete, and was properly pursued, *Lit. s. 66. Co. Lit. 52. a.* but the exercise of authorities for delivery of seisin is not rigidly construed, *Naris v. Trift*, 2 Mod. 78. It is essential, however, that it should be made during the life of the principal, as it ceases by his death, *Co. Lit. 52. a.* except in the case of a corporation, see *post*, 229 in note.

If feoffor infant, &c. it must be made in person.

If the vendor do not deliver seisin in person, add here a power of attorney to another for that purpose, the form of which may be as follows :

“ And the said (*vendor*) hath nominated, constituted, and appointed, and by these presents doth nominate, constitute,

Letter of attorney to deliver seisin.

PURCHASES. to these presents have hereunto set and affixed

Feoffment.

and appoint the said A. B. (*or if two persons be named attornies*, the said A. B. and C. D. jointly, and each of them severally and respectively), his true and lawful attorney [or attornies] for him and in his name and stead, into and upon the several messuages, lands, tenements, and hereditaments hereby granted and enfeoffed, or mentioned or intended so to be, or into any part thereof, in the name of the whole, to enter, and full, quiet, and peaceable possession, and seisin thereof for and in the name of him the said (*vendor*) to take and have, and such possession and seisin being so taken and had, the like possession and seisin thereof, or of any part thereof in the name of the whole, unto the said (*purchaser*) his heirs and assigns, or to his or their certain attorney or attornies lawfully appointed and authorized to receive the same, to give and deliver, according to the form and effect and the true intent and meaning of these presents. And he the said (*vendor*) doth hereby allow, ratify, and confirm, and promise and agree, at all times hereafter, to allow, ratify and confirm all and whatsoever his said attorney or attornies shall lawfully do in the premises by virtue hereof.

Livery of seisin may likewise be made *to* an attorney for the *purchaser*, as well as *by* an attorney for the *vendor*, Co. Lit. 48. which may also be contained in the deed of feoffment, and may be thus :

Seisin taken by
attorney.

“ And the said (*purchaser*) hath nominated, constituted and appointed, and by these presents doth nominate, constitute, and appoint the said C. D. (*if a party to the deed, but if not, C. D. of, &c.*) his true and lawful attorney, for him and in his name and stead, to receive and take of and from the said (*vendor*) or the said A. B. (*the vendor's attorney*) his attorney as aforesaid, full and sufficient seisin and possession of all and singular the lands and hereditaments by these presents granted and enfeoffed, or mentioned or intended so to be, with the appurtenances, or of any part or parcel thereof, in the name of the whole to take

their respective hands and seals, the day and year first above written (1).

PURCHASES:

Feoffment.

Sealed and delivered, &c.

Memorandum of livery of seisin (2) to be indorsed on the deed of feoffment.

BE IT REMEMBERED, that on the day and year

Indorsement of
livery and
seisin.

and have, and such seisin and possession being so taken and had, to hold and retain to and for the use of the said (*purchaser*) his heirs and assigns for ever, according to the purport and effect, and the true intent and meaning of these presents."

It has been observed in a preceding note that livery of seisin when made by attorney, must be effected during the life of the vendor, but this does not hold where the feoffment is made by a body corporate, as the death of the head or principal of a corporation will not vacate the attorney's authority, which is that of the aggregate body delegated by its common seal.

Livery by
a corporation,
need not be
made during the
life of the feoffor.

(1) If the feoffment be a body corporate, the *testatum* will be, Corporation.

" IN WITNESS whereof the said mayor, commonalty and citizens (*or as the case may be*) have hereunto put their common seal the day and year first above written."

(2) If the feoffment be by a corporate body, delivery of the deed will not be necessary, see *ante*, No. XVI. p. 184. n. (27).

Delivery of
deed not necessary
by a corporation.

Livery of seisin is essential to a feoffment, for unless it be given, the feoffment will pass only an estate at will, Co. Lit. 48. d.; but although no livery be made, yet if the feoffment be accompanied by a fine it will operate as a declaration of the uses of the fine, 1 Lord Raym. 291. 12 Mod. 165.

And it is proper that the livery of seisin should be testified by an indorsement on the deed: but if it be not indorsed, the fact whether it were or were not made may be left to a jury, Hands v. James, 2 Com. 531. And where there has been long possession under a feoffment, the court will presume livery to have been made, Jackson v. Jackson, Fitzgib. 146. and equity will in some cases supply the want of livery, Burgh v. Francis, Fin. 28. 74. And in a late case livery of seisin was presumed after

Livery should
be indorsed.

PURCHASER. first within written, peaceable and quiet possession, and full seisin of the messuages, lands, tenements, and hereditaments within mentioned to be granted and enfeoffed to the within named (*purchaser*) and his heirs, were openly had and taken by the within named (*vendor*) (1); and by him delivered to the said (*purchaser*) to the use of the said (*purchaser*) (2) and his heirs, according to the purport and true intent

Feoffment.

twenty years possession, although not indorsed, Rees dem. Chamberlain v. Hand, Wightw. 69. 123.

Seisin delivered by attorney.

(1) If seisin be delivered by attorney, say,

“By the within named (*attorney*), and by him in the name of and for the said (*vendor*), delivered to the said (*purchaser*).”

Seisin taken by attorney.

If the seisin be taken by attorney, say,

“Delivered to the within named attorney in the name of and for the said (*purchaser*).”

Premises in lease.

If the premises are in lease, add,

“With the full assent of the tenant thereof, (testified by his signature to the memorandum of livery indorsed thereupon), but without prejudice to his interest therein.”

Feoffor must be in possession.

As a deed of feoffment transfers the possession to the feoffee, it is absolutely necessary that the feoffor should have possession at the time of making the livery, Dyer, 106. 131. Bettesworth's case, 3 Co. 31. If, therefore, the premises are on lease, the tenant is often required to relinquish his possession for the occasion, saving his own right to re-enter, *ibid.* 362. Shep. Touch. 202. but his assent to the livery seems to be sufficient. Vid. 2 Bla. Com. 307. n. 4.

Dower.

(2) If the feoffment be made to a purchaser and his trustee to prevent dower, say,

“Unto the said (*purchaser*) and his heirs, to the uses, upon the trusts, and for the ends, intents, and purposes declared in and by and according, &c.” *as above*.

and meaning of the within written indenture, in the presence of us whose names are hereunto subscribed (1). PURCHASES.

Feoffment.

(1) If the lands enfeoffed lie in several counties, and *actual* delivery of possession is to be given, as supposed in the above form (which is termed livery in *deed*), separate liveries must be made of the land lying in each county, Lit. s. 418. Perk. s. 226. 227. unless they are all comprised in one and the same manor, in which case livery in one of the counties will be sufficient, *ib.* after which the feoffee will be in the full possession of the land without any subsequent entry. It may be proper, however, to remark that livery within *view* of the lands, without any actual delivery of possession (which is called a livery in *law*), may be made, and will be good if perfected by a subsequent *entry* by the feoffee; and in this case one livery of the whole land will be sufficient, although it lie in different counties; but the entry by the feoffee must be made during the joint lives of himself and of the feoffor, for if either of them die before entry, the livery made within view will be ineffectual, Co. Lit. 48. b. *Parsons v. Pearce*, Pollex. 45. but the marriage of a feme feoffor with the feoffee before his entry after livery by view will not, *Parsons v. Petit*, 2 Salk. 165. This form of livery must also be made by the feoffor himself in person and not by attorney, *Aprice v. Rogers*, 2 Dyer, 233. The former mode of livery is therefore always to be recommended when practicable; should, however, any circumstances render it necessary that the latter should be had recourse to, the form may be,

Lands lying in several counties.

Livery in view.

“ I deliver you possession of yonder land, as described in this indenture; go and enter into the same, and take possession of it accordingly:” see Pollexf. 43.—and see INTRODUCTION, Sec. II.

Form of livery in view.

And the memorandum of such livery may be,

“ Be it remembered, that on this day of livery within view of the lands comprised and described in the within written indenture, was given to, &c.” *as above.*

. A feoffment when made for clearing disseisins, &c. should be accompanied by a fine to operate under the stat. of nonclaim, as to which see 4 Elem. Conv. 2d Ed. c. 1. and Sup. Tit. FEOFFMENT.

PURCHASES.

Copyholds.

No. XVIII.

Conveyance of Copyholds from a Vendor to a Purchaser by Surrender (1) and Deed of Covenants.

Variations where the Surrender is made at or before, and where after executing the Deed.

Where it is intended that the Lands, &c. should descend to the Purchaser's Heirs, free from the free bench of his Wife (2).

Where the Vendor is entitled to a moiety or other undivided part only.

Where in remainder or reversion.

Where the sale is by private contract or by auction, &c. &c.

Where the vendor is tenant in tail, and the entail to be barred.

Where for life.

Where the premises are in mortgage.

And see the Variations subjoined to No. XVI.

THIS INDENTURE, of two parts, made the
day of [in the year of the

Demesnes.

(1) It is unnecessary to observe, that it is only when copyholds are in the hands of tenants that a surrender is necessary to pass them. When the grant is of the manor, or of the demesnes of the manor, by the lord himself, the conveyance will be by lease and release, or other conveyance adapted to the passing of freehold inheritances, as they are free in his hands, and held by customary tenure by the tenants only.

Dower, or free bench.

(2) As a wife is entitled to free bench of the copyhold lands

reign, &c. and] in the year of our Lord

BETWEEN (*the vendor*) of, &c. of the one part,
and (*the purchaser*) of, &c. of the other part (1),

WHEREAS the said (*purchaser*) hath contracted
with (2) the said (*vendor*) for the absolute purchase of the copyhold lands, and hereditaments hereinafter described, free from incumbrances (other than as hereinafter is mentioned) at the sum of £ (3) Now THIS INDENTURE

PURCHASES.

Copyholds.

Parties.

WITNESS.

of her husband only by special custom, and generally, then only of those of which he died seised, it is not in ordinary cases necessary to limit copyhold lands for the prevention of dower, in order to enable him to dispose of them in his life-time, discharged of that title; but as by the particular custom of some manors, she is entitled to her free bench of all the customary lands, &c. of which her husband was possessed at any time during the coverture, and as it may frequently happen, where it is not so, that the husband may have reasons for desiring his copyhold estates to descend to his own heirs, freed from the wife's title to free bench, I have conceived it would render the form of assurance here given more useful by subjoining variations for that purpose.

(1) If it be intended that the wife of the purchaser should be precluded from her title to free bench, the name of a trustee may be inserted for the purpose, and see *post*, p. 240. n. (1).

Free bench.

If a mortgagee be a party, and has been admitted, make him of the *first* part, but if not, of the *second* part.

Mortgagee.

If the vendor be tenant in *tail*, or for *life*, or in remainder or reversion, recite the deed or will under which he derives his title.

Tenant in tail, &c.

(2) If the estate was sold by public auction, or otherwise than by private contract, see No. XVI. p. 163. n. (4).

Sale by auction, &c.

(3) If the contract for a purchase happen to be made so nearly upon the eve of a court being holden, that there is not sufficient time to prepare a deed of covenants to accompany the surrender until after the surrender has been made; or such deed of covenants be executed at the same time with the sur-

Where surrender previously or now made.

PURCHASES. WITNESSETH, that in pursuance of the said contract, and in consideration of the sum of

Copyholds.

render, (which is much the safer and better way, as in case of the death of the vendor before the surrender be actually made, great difficulties may arise in afterwards procuring it;) the covenant for surrendering the premises will of course be unnecessary, and the deed may, from the place referred to in the text, proceed as follows:

“AND WHEREAS the said (*purchaser*) sometime since contracted with the said (*vendor*) for the purchase of the said customary or copyhold messuage, &c. at the price or sum of £ . And whereas, on or about the day of now last past, the said (*purchaser*) paid [*or hath this day paid*] unto the said (*vendor*) the said sum of £ in lawful money of the United Kingdom of Great Britain and Ireland, of English value and currency, in full for the said purchase, the receipt whereof, &c.” *as in the text.* “And at a court holden in and for the said manor of on the said day of [*or this day holden for the said manor*] [*or this day out of court*] the said lands and hereditaments were duly surrendered by the said (*vendor*) into the hands of the lord of the said manor, according to the custom thereof. NOW THIS INDENTURE WITNESSETH, that the said surrender so made, and all and every other surrender and assurances heretofore or hereafter made, or to be made in pursuance of the said in part recited contract or agreement, or of these presents shall be and enure, and the same is and are and were intended to be and enure to the use of the said (*purchaser*) his heirs and assigns, for ever, to be holden at the will of the lord, according to the custom of the said manor, by the rents and services therefore due, and of right accustomed; and the said (*purchaser*) was then and there [*or hath been*] admitted thereto to him and his heirs accordingly, as by reference to the court rolls of the said manor will more fully appear. And whereas, upon the contract for the said purchase, it was agreed that for further assurance, and the quiet enjoyment of the said lands and

£ (1), of lawful money of the United **PURCHASES.**
Kingdom of Great Britain and Ireland, of English
value and currency to the said (*vendor*) in hand
well and truly paid (2) by the said (*purchaser*)

Copyholds.

That in consideration of the purchase money.

hereditaments by the said (*purchaser*) his heirs and assigns, the said (*vendor*) should within the space of one calendar month then next thereafter, [*or forthwith*] enter into such covenants, declarations, and agreements relative thereto, as hereinafter is expressed. NOW THEREFORE THIS INDENTURE FURTHER WITNESSETH, that in pursuance and performance of the said agreement, and for the considerations hereinbefore mentioned, he the said (*vendor*) for himself, his heirs, executors, and administrators, DOTH hereby covenant, promise, declare, and agree with and to the said (*purchaser*) his heirs and assigns, in the manner following (that is to say).” Pursue the covenants for the title as *post*, p. 242.

It may however be here observed, that when copyholds are conveyed under a commission of bankruptcy, no surrender will be necessary, as by 13 Eliz. c. 7. and 5 Geo. 2. c. 30. copyholds are declared to vest in the commissioners, and to be transferable to purchasers, &c. by a bargain and sale; and so when sold, in pursuance of a grant or power. For the form of which, see *post*, No. XIX. and see *ib.* n. (1).

Copyholds may pass by bargain and sale.

(1) As the surrender itself is the principal assurance in a conveyance of copyholds, the consideration need not (so far as concerns the stamp acts), be set out in the deed of covenants. **Consideration.**

(2) If the consideration be any other than money paid down, see No. XVI. p. 167. n. (8). **Consideration.**

And if the estate be sold by the direction of the court of Chancery, and the purchase money is to be paid into the Bank, or of the court of Exchequer, and the purchase money to be paid to the deputy remembrancer, see the variation subjoined to the same precedent, p. 188.

Sale before master.

If the purchase money is not to be paid till the surrender made, say,

“To be paid at the time hereinafter mentioned,” and omit what follows in the text, to the words, “He the said (*vendor*) for himself,” &c. (*see covenant to surrender*) next page.

Purchase money paid on surrender.

PURCHASES. at or immediately before the sealing and delivery
 of these presents, the receipt whereof, [and that
 the same is in full for the absolute purchase of
 the customary inheritance in possession, of the
 messuages, lands, tenements, and hereditaments
 hereinafter described], the said (*vendor*) DOTH
 hereby acknowledge, [and of and from the same
 doth fully and absolutely acquit, release, dis-
 charge, and exonerate the said (*purchaser*) his
 heirs, executors, and administrators, and the said
 messuages, lands, tenements, and hereditaments,
 as well by these presents as by the receipt or ac-
 knowledgment for the same sum hereupon in-
 dorsed] He the said (*vendor*) for himself, his
 heirs (1), executors, and administrators, DOTH here-
 by covenant, declare, and agree with and to the
 said (*purchaser*) his heirs and assigns in the manner
 following (that is to say) that he the said (*vendor*)
 or his heirs (2), and all and every other person
 and persons in whom any legal estate or interest
 is or may be vested, shall and will at the proper
 expense and costs, in all things, of the said (*pur-*

Copyholds.

The vendor co-
 venants to sur-
 render, &c.

Covenant to
 surrender binds
 the heir.
 Free bench.

(1) Covenant by a vendor for himself and his heirs to sur-
 render copyholds, binds the heir, *Keene v. Theek*, 9 Mod. 106.

(2) If by the custom of the manor, the wife of the vendor is
 entitled to free bench out of the lands of which the husband was
 seised during the coverture, insert here a covenant to levy a fine
 (vid. *post*, No. XXXI. and SUP. TIT. FINE.) unless her title is
 barrable by a surrender, in which case the covenant alone for a
 valuable consideration will be an equitable bar. *Brown v. Rainde*,
 3 Ves. jun. 256, but the husband has been decreed under cir-
 cumstances to procure the wife to surrender, *Stephenson v. Mor-*
rison, 7 Ves. jun. 474. in general her private examination by the
 steward is necessary.

chaser) his heirs and assigns (1), at or before the next PURCHASES.
 general, or other court which shall or may be here-
 after holden in or for the said manor of _____, or
 other manor or manors, whereof the lands and here-
 ditaments hereinafter described, or any of them are
 holden (2), well and duly surrender, or cause to be
 so surrendered into the hands of the lord or lords,
 or lady or ladies, for the time being, of the said
 manor or manors, or otherwise effectually convey
 and assure, according to the custom or respective
 customs thereof, to the use and behoof of the
 said (*purchaser*) his heirs and assigns (3), ALL

Copyholds.

(1) The surrender, being the *conveyance* of copyholds, is, as in other cases, to be made at the purchaser's expense, when there is no contrary agreement between the parties—and see *ante*, p. 40. n. (15).

Surrender to be
at purchaser's
expense.

(2) If the purchase money is not to be paid until the surrender is completed, omit the preceding acknowledgment by the vendor of his having received the money, *ante*, p. 236, and add here,

Purchase money
not paid till
surrender.

“ Upon payment by the said (*purchaser*) his heirs, executors, or administrators, well and duly surrender,” &c. *as above*.

(3) If vendor be tenant in tail, say,

Vendor tenant
in tail.

“ To the use of some person or persons, as or in the nature of a tenant or tenants to the præcipe, in order and to the end and intent that one or more recovery or recoveries may, at the expense of the said (*vendor*), be suffered and perfected of the said customary or copyhold hereditaments according to the form and custom of the said manor, but so nevertheless that the said (*tenant in tail*) shall be vouched and shall vouch over the common, or some other vouchee in and to the further end and intent that by or by virtue of the said recovery or recoveries, or immediately thereafter, the said hereditaments may be surrendered or otherwise assured, at the expense and to the use of the said (*purchaser*) his heirs and assigns for ever, and that he

PURCHASES. that (1) customary or copyhold messuage, &c. or
Copyholds.
 howsoever otherwise, the said messuages, lands, tenements, and hereditaments, or any of them, now are, or is, or heretofore were or was situated, tenanted, called, known, described, or distinguished; [AND all remainders and reversions (2), of and in the said hereditaments and premises, and every of them respectively; and all and singular the rents, issues, and profits thereof, from the day of last past]. TOGETHER WITH all [dwelling and other houses (3), outhouses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, benefit and advantage of ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters,

General appur-
tenances.

and they may be admitted tenant or tenants thereof, to hold the same at the will of the lord, according to the custom of the manor, subject only to the rents, fines, duties, and services thenceforth to become due, and be payable or performed in respect of the same." See also 1 Prest. Abstr. 203. 341.

Parties.

(1) Here describe the subject of the conveyance by its ancient and present name, situation, tenantcy, &c. See descriptions applicable to different species of property, INDEX *voce* PARCELS, and vid. No. XV. p. 128, n. (13).

Moiety, &c.

If the conveyance be of a moiety or other portion only of the estate, see the mode of description and variations in precedent No. XXVI.

Remainder, &c.

And if it be of a remainder or reversion expectant upon the determination of any prior estate, see *post*, No. XXIV.

Remainder, &c.

(2) As seisin may be had of an estate in remainder or reversion, it may be the subject of a surrender, as may also a rent if incident to the reversion. *Austin v. Smith*, 1 Leon. 315.

General words.

(3) See general words applicable to different kinds of real property, precedent No. XV. p. 173, n. (14), and INDEX *voce* GENERAL WORDS.

land covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, botes, estovers, quarries, rights and privileges of common, feeding, and foldage, of every kind and all] and all manner of [other] rights, privileges, easements, advantages, appendages, and appurtenances whatsoever to the said messuages, lands, tenements, hereditaments, customary estate and premises, or any of them, or any part thereof respectively, belonging, or in any wise appertaining, [or reputed or deemed so to be, or with the same or any of them, now or heretofore holden, used, occupied, or enjoyed], except, &c. (2) AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity, of him the said (*vendor*) in, to, out of, upon, or respecting the said hereditaments and premises, or any of them : [and also all deeds, copies of court roll, muniments, and writings whatsoever, which in any wise relate to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, and which now are (1) or hereafter shall or may be in the possession or lawful power of the said (*vendor*) or his heirs, or of any person or persons from whom he or they can or may pro-

PURCHASES.

Copyholds.Deeds and
copies.

(1) If the conveyance be of a remainder or reversion, see *post*, No. XXIV. Remainder.

(2) Insert exceptions of ways, &c. *if any*. Exceptions.

PURCHASES. cure the same, without action or suit at law or in equity; and true and attested copies (duly stamp^t), of all other deeds, rolls, muniments, and writings (1) (not being of record) so in his or their custody or power as aforesaid, in any wise relating to the same hereditaments and premises, or any of them, jointly with other hereditaments or property of equal or greater value; the said copies, when first required, to be made and delivered at the expense of the said (*vendor*) his heirs, executors, or administrators; but all future copies to be made and taken at the expense of the said (*purchaser*) his heirs or assigns]. And it is hereby declared and agreed by and between the said parties hereto, that the said surrender or surrenders when made and perfected shall be and enure as to all and singular the said hereditaments and premises, with their appurtenances, to and for the use and behoof of the said (*purchaser*) his heirs and assigns for ever (2), to

Copyholds.

Declaration of
use of surrender
to purchaser and
his heirs.

Schedule.

(1) If a covenant be inserted for production of scheduled title deeds, add,

“Whether mentioned in the schedule hereunder written or not.”

Free bench.

(2) If the wife of the purchaser is intended to be precluded from her title to free bench, (where entitled during coverture) say, instead of the words within inverted commas,

“To the use of the said (*trustee*) and his heirs, but nevertheless in trust for the sole benefit and advantage of the said (*purchaser*) his heirs and assigns for ever.” See 2 Blac. Com. 337. 2 Watk. Copyh. 79, and the cases there cited. Or, (*if the custom allow of a demise, or the lord give licence*).

be holden at the will of the lord, according to the custom of the said manor or manors whereof the same are holden, (subject only to the rents and services rightfully due in respect thereof), to and for the end and intent that he the said (*purchaser*) or his heirs shall or lawfully may be forthwith admitted to the same accordingly] (1). AND further, that in the mean time, and until such surrender as aforesaid, and admittance thereupon shall be respectively made and perfected, he the said (*vendor*) and his heirs, and all and every other person and persons claiming or entitled from or under him, shall and will stand and be seised or possessed of and interested in all and singular the said hereditaments and premises, with their rights, members, appendants, and appurtenances, as to and for all his and their estate and interest therein, in trust for him the said (*purchaser*) his heirs and assigns for ever, [and to for or upon no other trust or purpose whatsoever] (2). AND the said (*vendor*) for himself, his heirs, executors, and

PURCHASES.

Copyholds.

Covenant by the vendor that he is seised, &c.

“ To the use of the said (*trustee*) his executors and administrators, for the term of 99 years, if the said (*purchaser*) shall so long live, and from and after the determination of that estate, and in the mean time subject thereto, to the use of the said (*purchaser*) his heirs and assigns.” See *Salisbury v. Hurd*, 2 Cowp. 481. *Holder v. Farley*, Cro. Jac. 36. *Moore*, 756.

Freebench.

(1) If the premises be in mortgage and the mortgagee has not been admitted, add here a release from his surrender.

Mortgage.

(2) If a mortgagee be a party, add a covenant that he has not incumbered. See form of such covenant, *post*, No. XXVII:

Mortgage.

PURCHASES.Copyholds.

administrators, DOTH hereby covenant, declare, and agree, with and to the said (*purchaser*) his heirs and assigns, in the manner following (that is to say) that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, or knowingly suffered, or omitted by him the said (*vendor*) [or any of his ancestors] to the contrary (1), he the said (*vendor*) at the time of (2) the sealing and delivery of these presents, is lawfully and rightly seised to him and his heirs, in his own right, and to his own use, of all and singular the [messuages, lands, tenements,] hereditaments, and premises hereinbefore covenanted or agreed to be surrendered, as of, in and for a good, perfect, clear, absolute, and indefeasible estate of copyhold inheritance in fee simple (3), in possession and in severalty, at the will of the lord, according to the custom of the manor or respective manors

"Ancestors."

(1) If the vendor took by purchase, omit "or any of his ancestors," and see as to where the covenants are to be made to extend to ancestors and where not, *ante*, p. 141, n. (39).

Surrender already or now made.

(2) If a surrender has been already or is now to be made of the premises, say "at the time of making and perfecting the said surrender so hereinbefore mentioned to have been made as aforesaid, was," &c. and instead of the word "covenanted," say "*mentioned* to be surrendered" throughout, and make the covenants for the title to run in the past time, so as to have reference to the time of the surrender.

Tail.

If tenant in tail, see No. XXII.

Life.

If tenant for life, see No. XXIII.

Moiety, &c.

(3) If the vendor have a moiety or other portion only of an estate, see No. XXVI.

Remainder, &c.

If of a remainder or reversion, see No. XXIX.

whereof the same are holden, without the same **PURCHASES.**
 being subject to any [trust, condition, power of Copyholds.
 revocation, or of limiting or declaring any new or
 other use or uses, or any other] qualification, re-
 striction, matter, or thing whatsoever, expressed
 or implied, which can or may revoke, determine,
 abridge, qualify, alter, charge, incumber, or pre-
 judicially affect the said estate or premises respec-
 tively in any manner howsoever, [leases and agree-
 ments for leases, of which the said (*purchaser*)
 hath notice, and] the customary rents, dues, and
 services payable, or to be rendered or performed
 respectively, for or in relation to the said premises
 only excepted. [And also that for and notwith-
 standing any such act, deed, matter, or thing as
 aforesaid, he the said (*vendor*) now hath (1) in
 himself full power, and lawful and absolute right
 and title to surrender, and cause and procure to
 be surrendered, all and singular the hereditaments
 and premises, hereby covenanted and agreed to be
 surrendered, and the possession, reversion, and
 inheritance thereof, into the hands of the lord, as
 aforesaid, to and for the use and behoof of the said
 (*purchaser*) his heirs and assigns, according to the
 true intent and meaning of these presents, [and of
 the covenant or agreement hereinbefore contained
 for that purpose]. AND further, that he the said
 (*purchaser*) his heirs and assigns, immediately

And hath right
to surrender.

That the pur-
chaser shall
quietly enjoy.

(1) If the surrender have been already made, instead of
 "now hath," say "at the time of such surrender so made as
 aforesaid, had," &c.

Surrender be-
fore or now
made.

PURCHASES.Copyholds.

Free from incumbrances.

upon the completing and perfecting the said surrender (1), and at all or any time and times thereafter, shall or lawfully may be admitted unto, and enter upon, and hold, possess, and enjoy, all and singular the hereditaments and premises, hereby covenanted or agreed to be surrendered, with their and every of their rights, members, appendants, and appurtenances, and receive and retain the rents, issues, profits, and proceeds thereof, to and for his and their own use and benefit, without any manner of hindrance, interruption, disturbance, claim, or demand whatsoever, by the said (*vendor*) or his heirs, or any person or persons now or hereafter having, or rightfully claiming any estate, right, title, charge, or interest at law or in equity, in, to, out of, upon, or concerning the same, or any part thereof, from, through, under, or in trust for him, them, or any of them, [or any of the ancestors of the said (*vendor*)], or by or through his, their, or any of their procurement or privity, or acts, means, or defaults other than the lord for the time being, for or in respect of future dues and services, and any lessee or lessees claiming under, or by virtue of or in relation to any such leases or agreements for leases as aforesaid). AND that free and clear, and freely, clearly, and abso-

Remainder, &c.

(1) If the surrender be of a remainder or reversion, instead of these words, say "immediately upon the decease or other sooner determination of the estate for life of the said _____," &c.

Surrender already made.

And if the surrender has been already made, say "shall at all times hereafter be lawful," &c.

lutely discharged and exonerated, or otherwise, by **PURCHASES.**
 and at the expense of the said (*vendor*) his heirs, Copyholds.
 executors, or administrators, effectually defended,
 protected, and indemnified, of, from, and against
 all former and other [surrenders, gifts, grants,
 bargains and sales, releases, settlements, mort-
 gages, leases, wills, appointments, conveyances,
 covenants, agreements, descents, entails, condi-
 tions, estate, titles to dower and free bench, re-
 mainders and reversions in the crown or else-
 where(1), legacies, portions, annuities, rents, dues,
 heriots, debts to the lord, forfeitures, rights of
 entry, and cause and causes thereof, fines, amer-
 ciaments, escheats, and all and singular other]
 estates, rights, titles, interests, charges, and in-
 cumbrances whatsoever, which at any time or
 times heretofore or hereafter have been, or shall
 or may be made, created, executed, incurred, oc-
 casioned, or suffered by him the said (*vendor*) [or
 any of his ancestors], or his or their procurement
 or privity, or acts, deeds, or default, or by any
 person or persons now or hereafter rightfully
 claiming or possessing any estate, right, title, or
 interest, either at law or in equity, from, through,
 under or in trust for him, them, or any of them,
 the customary fines, heriots, rents, dues, and ser-

(1) Copyholds not being subject to judgments, &c. the Judgments, &c. usual general words extending to them, in a conveyance of freeholds, are properly omitted in that of copyholds, &c. see 3 Prest. Abstr. 351.

PURCHASES. vices, to be henceforth payable or performed respectively, for or in respect of the same premises, and such leases or agreements for leases as aforesaid, only excepted (1). AND moreover, that he the said (*vendor*) and his heirs, and all and every person or persons now or at any time hereafter rightfully claiming, or having title to claim any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or respecting (2) the hereditaments and premises hereby covenanted and agreed to be surrendered (3) or any part thereof, from, through, under, or in trust for him, them, or any or either of them, [or any of the ancestors of the said (*vendor*)] (other than under or by virtue of such leases, or agreements for leases as aforesaid, so far as respects their respective estates or interests under or by virtue of the same) shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the costs and expense of the said (*purchaser*), his heirs or assigns, make, do, ac-

Mortgage.

(1) If premises are mortgaged, add,

“And in particular of, from, and against the said hereinbefore in part recited surrender by way of mortgage, and all principal and interest remaining due or hereafter to become due in respect thereof.”

Moiety, &c.

(2) If the conveyance be of a moiety or other portion of the inheritance, see No. XXVI.

Remainder, &c.

If of a remainder or reversion, see No. XXIV.

**Surrender
already had.**

(3) If the premises have been already surrendered, say,

“And hereinbefore mentioned to have been surrendered.”

knowledge, levy, suffer, execute, and perfect, [and cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected], all and every such further and other lawful and reasonable acts, deeds, conveyances, surrenders, admittances, assurances, matters and things whatsoever [whether by surrender or surrenders, fine or fines, common recovery or common recoveries, bargains, appointments, and sales, declaration or limitation of or to any use or uses, or other assurance or assurances whatsoever (and whether the same shall become necessary or expedient by reason of any act, omission, or default, of him the said (*vendor*), [or his ancestors], or the act, omission, or default of the steward or homage, or lord or lords for the time being, of the said manor)], for the further, better, more perfectly, and absolutely, or satisfactorily conveying, confirming, and assuring the said hereditaments and premises, or any part or parcel thereof, with their respective rights, members, appendants, and appurtenances, to and for the use, behoof and benefit of the said (*purchaser*), his heirs and assigns, to be holden at the will of the lord, according to the custom of the said manor and free from incumbrances as aforesaid, in such manner and form as he the said (*purchaser*), his heirs or assigns, or his or their counsel in the law (being of the degree of a barrister) shall advise and require [and prepare and tender (if the nature thereof permit), for his or their signature and execution; so that

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Copyholds.

PURCHASES.*Copyholders.*

such further assurance or assurances, or any of them, do not contain nor imply any further or other warranty or covenant, than against or on the part of the person or persons who shall be required to make or execute the same, his, her, or their devisors, ancestors, heirs, executors, and administrators, and his, her, or their own respective acts, deeds, omissions or defaults; and so that the person or persons, who shall be required to make or execute any such assurance or assurances, be not obliged for the making or executing the same, to go out of or further than the manor or manors, whereof the hereditaments so to be assured, are or shall be holden, without a reasonable and sufficient sum being previously paid, tendered, or secured to him, her, or them, for or in respect of his, her, or their time, trouble, and expenses, which said acts, deeds, and assurances respectively, shall be and enure (unless otherwise thereby declared or expressed), in confirmation of these presents, and of the estate and interest hereby, or mentioned or intended to be hereby granted or otherwise assured (1)]. IN WITNESS, &c.

Title deeds, &c.

(1) If the title deeds or copies of court rolls, be not delivered to the purchaser, add a covenant for their production, as in precedent No. XVI. p. 196, or prepare a separate deed for that purpose, agreeably to the form referred to, INDEX VOC. DEEDS.

Doubts as to amount of fines, &c.

If it be doubtful or is not satisfactorily ascertained what fines, &c. are due on deaths, &c. by the custom of the manor,

a covenant may here be added that they do not exceed a given PURCHASES, amount, as,

Copyholds.

“AND the said (*vendor*), for himself, his heirs, executors, and administrators, doth hereby further covenant, declare, and agree, with and to the said (*purchaser*), his heirs, and assigns, that no fine heriot, or rent, or any thing in the nature or lieu of a fine heriot, or rent, exceeding in amount or value the sum of £ , of lawful current money of England, is due or of right payable or to be given or rendered by the custom of the said manor, for or in respect of the copyhold or customary lands or tenements hereby covenanted to be surrendered as aforesaid, or any part thereof, upon the death or alienation of the customary tenant thereof, or upon the death or alienation of the lord of the said manor, or otherwise howsoever: And further, that he the said (*vendor*), his heirs, executors, or administrators, shall and will from time to time and at all times, pay, save harmless, exonerate and indemnify the said (*purchaser*), his heirs and assigns, from and against all or any such fine, heriot, rent, or demand exceeding the amount or value aforesaid, and from and against all costs, charges, damages, and expenses which he or they shall or may sustain, or be put unto by reason thereof.”

. It is declared by the late stamp act of 48 Geo. III. c. 149, Stamp. that in the conveyance of copyholds, if by *bargain and sale*, by commissioners of bankruptcy, or by executors or others, by virtue of a *power* given by will or act of parliament, the bargain and sale shall be deemed the principal instrument, and have the *ad valorem* duty imposed upon it; but that in *all other cases* the surrender or voluntary grant, or memorandum thereof (if made out of Court), or the copy of Court roll (if made in Court) shall be deemed the principal instrument for this purpose:

And it is also provided by the same act, sec. 33, that every person purposing to make a surrender of copyholds in Court, shall deliver Notice to steward. to the steward a note in writing, specifying whether such surrender is upon a sale or will, and if upon sale, then specifying the amount of the purchase or consideration money, to the in-

PURCHASES. tent that the same may be set forth in words at length in the
_____ copy of the Court roll, to be afterwards made out of such sur-
Copyholds. render, and which shall be made out ready for delivery within four
_____ calendar months next thereafter.

Provisoes, &c. For various provisos, &c. adapted to different circumstances
of title, &c. see the riders at the end of No. XVI.

PURCHASES.

Copyholds.

2. *Memorandum of the Surrender taken in Court to be engrossed on the Court Rolls.*

Variations *where it is taken out of Court.*

Manor of . } BE IT REMEMBERED that at a
 } court holden in and for the
 said manor of , this day of , Surrender.
 in the year of our Lord , came (*the vendor*)
 of, &c. (1) one of the copyhold or customary
 tenants of the said manor in his proper person (2),
 and for and in consideration of the sum of £
 of lawful current money of England, to him paid
 by the said (*purchaser*) for the absolute purchase
 of the messuages, lands, and hereditaments, here-
 in afterdescribed (3), surrendered (4) into the

(1) The person surrendering a copyhold must be he who has the *legal* estate in the land.

(2) If the surrender be made by attorney, say,

Attorney.

“ By A B his attorney, duly appointed by a certain deed poll under the hand and seal of the said (*vendor*) bearing date, &c. which was produced and read.”

(3) By the 48 Geo. III. c. 149, sec. 30, the consideration for the purchase, &c. of copyholds, must be set forth in the copy of the Court Rolls ; and it seems proper that it should be inserted in the surrender. This, and not the deed of covenant by which it is usually accompanied, being the principal assurance, requires the *ad valorem* stamp. See sect. 22, of the act, and *ante*, p. 249, in notes.

Consideration.

(4) This word, according to Lord Coke, is essential, and cannot be supplied, see Copyholds, sec. 39 ; but *quære*, and see *Zinzan v. Talmage*, Sir T. Jones, 142, 2 Show. 131.

“ Surrender.”

PURCHASES. hands of the lord by the rod (*or as the custom of the manor may be*) by the personal acceptance of the said lord (*or by the acceptance of steward of the said manor*) (1) according to the custom of the same manor, ALL that copyhold messuage, &c. and of which he the said (*vendor*), at the time of the making the said surrender, was seised in fee at the will of the lord, according to the custom of the said manor (2), with all and sundry the appurtenances to the same belonging. AND all the estate, right, title, interest, use, trust, benefit, claim, and demand whatsoever (3), of him the said (*vendor*), in, to, or out of the same premises, or any of them, “to and for the use and behoof of (*the purchaser*) of, &c. , his heirs and assigns for ever (4),” to be holden at the

Surrender out
of court.

(1) If taken out of Court, say,

“By the said and (*two copyholders*) according to the custom of the said manor.”

(2) Mr. Watkins recommends, that the estate which the surrenderor had in the premises, should be expressed in the surrender, in order to prevent the lord being imposed upon by a declaration of uses between the parties more extensive than the copyholder's interest, see 1 Watk. Copyh. 52, n. (p).

“All the estate,” &c.

(3) Although a mere right or other *equitable* estate or interest only, not lying in *tenure*, will not pass by surrender, yet the insertion of these words seems to be proper, as furnishing evidence of the vendor having intended to pass the whole of his interest in the premises whatever it might be, and for this purpose it should seem, that it will operate as a grant and release of such right or interest, see *Stone v. Eaton*, 2 Show. Rep. 82. *Spindlar v. Wilford*, 2 Vern. 169, and see the cases cited, 1 Watk. Copyh. 60. n. (u).

Free bench.

(4) If it be intended that the wife of the purchaser should be barred of her title to free bench, the surrender may be,

will of the lord according to the custom of the said manor, by and under the rents and services thereof due and of right annexed.

PURCHASES.

Copyholds.

Taken, &c. (1)

“ To the use of A B of, &c. and his heirs, but in trust for the said (*purchaser*) his heirs and assigns.”

Or,

“ To the use of (*the trustee*) for 99 years (if the purchaser shall so long live) and from and after the determination of that estate (and in the mean time subject thereto), to the use of the said (*purchaser*) and his heirs.”

(1) If the surrender were taken out of Court, say,

Surrender out
of court.

“ Before and two other copyhold, or customary tenants of the said manor, at the house of , called or known by the sign of , situated at , within the said manor.”

* * Stamp, *vid. ante*, p. 249, n. (2).

As to indorsement of receipt for purchase; mode of execution, &c. &c. see p. 184, n. (27) *et seq.*

PURCHASES.

Copyholds.

No. XIX.

Conveyance of Copyholds by a Vendor (Trustee for Sale under a Will) to Purchaser by Bargain and Sale (1).

Variation where the heir at law is a party.

THIS INDENTURE made the day of , in the first year, &c. and in the year of our Lord , BETWEEN (*vendor*) devisee in trust, under or by virtue of the last will and testament of A B, late of , deceased, as hereinafter is recited, of the one part, and (*purchaser*) of, &c.

Where copyholds may pass by common law assurances.

(1) Although copyhold hereditaments will not, generally speaking, pass by any common law conveyance, but only by surrender into the hands of the lord, yet this is to be understood of the legal estate in copyholds, this alone being the subject of a surrender, which is a symbolical delivery of the land itself; but where the vendor has not such estate, but only an equitable interest, as a mortgagor, after the admission of the mortgagee, or where the sale is made by virtue of an authority only, as under a trust or direction to sell contained in a will, this interest may be conveyed or power executed by a common law conveyance, and when made to a stranger, i. e. to one between whom and the vendor there is not any privity of estate, is usually by bargain and sale, and which being presented by the homage, as in the case of a surrender, entitles the bargainee or purchaser to be admitted, and *vide* Prest. Abstr. 202, 2 *ib.* 259, and *ante*, p. 237, in notes, and 249 n. (2). This bargain and sale, it is however to be observed, does not operate under the statute of uses, but merely as a common law conveyance.

of the other part (1). WHEREAS ~~the said~~ A B being PURCHASES.
 seised of or well entitled to ~~the~~ copyhold lands Copyholds.
 and hereditaments ~~hereinafter~~ described, to the Recital of will.
 use of him and ~~his~~ heirs as for an absolute estate
 of inheritance, according to the custom of the
 manor of B, whereof the same are holden, duly
~~made~~ and published his last will and testament in
 writing, or appointment in the nature of such,
 bearing date on or about the day of ,
 and thereby willed and directed that the said
 (*vendor*), his heirs or assigns, should as soon as
 conveniently might be after his decease, by public
 sale or private contract, at his discretion, sell and
 dispose of all that his copyhold messuage, or
 tenement, with the garden and appurtenances
 thereto belonging, situated at, &c. and holden, or
 being parcel of the manor of, &c. and stand pos-
 sessed of the money to be produced by such sale
 (after deducting all reasonable expenses thereof),
 IN TRUST for the purposes in his said will parti-
 cularly mentioned, and the said (*testator*) thereby
 willed and declared, that the receipt of the
 said (*vendor*) or his heirs, should be a good and
 sufficient discharge, and good and sufficient dis-
 charges to the purchaser or purchasers of all or any
 part of the said copyhold premises, for his, her,
 or their purchase money or purchase monies, and
 that after such receipt given, such purchaser or
 purchasers should not be answerable or account-
 able for his, her, or their purchase money or pur-

(1) If the heir at law of the devisor be a party, make him, as Heir party.
 "being the customary heir of the said (*devisor*) deceased," of the
 2d part, and the purchaser of the 3d part.

PURCHASES.

Copyholds.

Witness vendor
in consideration
of purchase
money.

chase monies, nor be in any wise answerable or accountable for the misapplication or non-application thereof, or of any part thereof, or be obliged to see to the application or dispositions thereof, or any part thereof. AND WHEREAS the said (*testator*) departed this life on or about the day of , without revoking or altering his said will (1) : And whereas the said (*vendor*) in pursuance of the trusts reposed in him by the said in part recited will or testamentary directions of the said (*testator*) deceased, hath contracted and agreed with the said (*purchaser*) for the absolute sale to him of the said copyhold messuage and premises so directed to be sold as aforesaid, free from all incumbrances except as hereinafter mentioned, at and for the price or sum of £ . NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement (2), and also in consideration of the sum of £ of lawful money of the united kingdom of Great Britain and Ireland, of English value and currency, in hand well and truly paid by the said (*purchaser*), at or before the sealing and delivery of these presents [the receipt whereof, and that the same is in full for the absolute pur-

Heir party.

(1) If the heir at law join, add,

“ And whereas at a court holden in and for the said manor of , the said (*heir*) as customary heir of the said (*testator*), was admitted to the said copyhold messuage and hereditaments by the rents and services therefore due and of right accustomed.”

Heir party.

(2) If heir join, add,

“ And with the privity, consent, and approbation of the said (*heir*), testified by his being a party to and sealing and delivering these presents.

chase of the said messuage or tenements, here-
ditaments and premises, with their appurtenances,
and the inheritance in possession thereof, free from
all incumbrances [except as hereinafter excepted],
the said (*vendor*) doth hereby acknowledge [and
of and from the same and every part thereof, and
all claims and demands in respect thereof, doth
acquit, release, exonerate, and for ever discharge
the said (*purchaser*), his heirs, executors, admi-
nistrators, and assigns, for ever by these presents].
He the said (*vendor*) (in pursuance, exercise, and
execution of the power and trust in him reposed,
in and by the said in part recited will of the said
(*testator*) deceased, and by virtue of all and every
other power and powers, authority and authorities,
thereby or by any other ways or means vested
in or given to him in this behalf (1)), HATH
bargained and sold, and by these presents doth
bargain and sell unto the said (*purchaser*) and his
heirs, ALL that customary messuage, &c. with all
houses, &c. and all the estate, &c. and all deeds,
&c. (2). TO HAVE AND TO HOLD the said messuages,
&c. and all and singular the premises hereinbefore
described, and bargained and sold, or intended so
to be, with their appurtenances, unto the said
(*purchaser*), his heirs and assigns: To and for
his and their own proper use and benefit for ever

PURCHASES.

Copyholds.

And in pur-
suance of trust
bargains and
sells.

Parcels.
To hold to the
purchaser and
his heirs.

(1) If the devisor's heir is a party, add,

“With such privity and approbation, and so testified as
aforesaid.”

Heir party.

(2) As *ante*, p. 238.

PURCHASES.

Copyholds.

Yielding dues
and services to
the lord.Direction for
heir at law to
surrender.Covenant by
vendor that he
has not in-
cumbered.

according to the custom of the said manor of
 , whereof the same are holden as
 aforesaid; yielding and paying, performing and
 doing, unto the lord or lords, for the time being, of
 the said manor, all and every the fines, rents, duties,
 and services of right used and accustomed to be
 paid, done and performed, and hereafter to grow
 due for or in respect thereof: And the said
 (*vendor*) doth hereby request and direct the said
 (*heir*), according to his interest therein, forthwith
 hereafter to surrender into the hands of the lord
 of the said manor of , according to the
 custom thereof, the said copyhold messuage or
 tenement, hereditaments and premises, with their
 appurtenances, to the use of the said (*purchaser*),
 as such purchaser thereof as aforesaid, his heirs and
 assigns for ever, according to the custom of the
 said manor, by the rents and services aforesaid, to
 the end, intent, and purpose that the said (*purchaser*)
 may be admitted tenant of the said pre-
 mises, and hold and enjoy the same to him, his
 heirs and assigns accordingly: And the said
 (*vendor*), for himself, his heirs, executors, admi-
 nistrators, and his and their acts and deeds, doth
 covenant and declare, with and to the said (*purchaser*)
 and his heirs, by these presents, that he
 the said (*vendor*) hath not at any time or times
 heretofore, made, done, committed, or knowingly
 or willingly suffered or been party or privy to
 any act, deed, matter, or thing whatsoever, where-
 by or by means whereof the said messuage or
 tenement, hereditaments and premises, herein-

before described, and bargained and sold, or intended so to be, with their appurtenances or any part thereof, are, is, can, shall, or may be in any wise impeached, charged, incumbered, or prejudiced, in title, estate, or otherwise howsoever (1).
IN WITNESS, &c.

PURCHASES.

Copyholds.

(1) If the heir at law be a party, add usual covenants for the title, as *ante*, p. 196. Heir a party.

PURCHASES.

*Freeholds and
Copyholds.*

No. XX.

Conveyance of Freehold and Copyhold Hereditaments to a Purchaser.

Variations as in margin of the notes.

Recital of title.

THIS INDENTURE made the day of [in the first year of the reign, &c. and] in the year of our Lord BETWEEN the (*vendor*) of, &c. of the one part, and (*the purchaser*) of, &c. of the other part (1). WHEREAS by indentures of lease and release, bearing date respectively on or about the and days of , which was in the year , the release being of parts, and made or expressed

Dower.

(1) If the wife of the vendor be entitled to dower or free bench, make her a party, and see *ante*, p. 232. n. (2). and *post*, Vol. II. No. XXXI.

If the vendor took the premises to uses to prevent dower, make the vendor's trustee for that purpose a party, and see *post*, No. XXXIV.

If the vendor did not so take, but the purchaser is desirous of taking to such uses, make a trustee party for that purpose, as "a trustee named and appointed by and on the part of the said (*purchaser*) for the purpose hereinafter mentioned of the third part," and see *post*, Vol. II. No. XXVIII.

If the vendor took with such limitations, and the purchaser is also desirous of so taking, see *post*, No. XXXV.

Construction,
&c.

For the construction and reason of such parts of this precedent, upon which no observations are here made, see those subjoined to No. XV. *ante*, p. 122. *et seq.*

to be made between A. B. therein mentioned to be of, &c. and by a certain surrender made on or about the day of , which was in the year , in pursuance of a covenant for that purpose contained in the said indenture of release, the several freehold and copyhold messuages, lands, and hereditaments hereinafter described and intended to be hereby granted, released, and covenanted to be surrendered respectively, were, for valuable considerations therein mentioned, conveyed, and assured to the use of the said (*vendor*) and his heirs. AND WHEREAS the said (*purchaser*) hath contracted (1) with the said (*vendor*) for the absolute purchase (2) of all and singular the said messuages, lands, and hereditaments at the sum of £ ; and hath requested that the same respectively may be conveyed and assured to him in the manner hereinafter expressed. AND WHEREAS it has been agreed by and between the said (*vendor*) and (*purchaser*) that the said sum of £ so to be paid for the whole of the said hereditaments, both freehold and copyhold, shall be apportioned (3) in the manner following (that is to

PURCHASES.

*Freeholds and
Copyholds.*

Of contract for
the purchase.Apportionment
of considera-
tion money.

(1) If the estate was sold by public auction, or otherwise than by private contract, see *ante*, No. XVI. p. 163. n. (4). Auction, &c.

(2) Where the vendor is entitled to a moiety or other undivided part of the estate, see *post*, No. XXVI. Moiety, &c.

(3) It is required by the late stamp acts, that when lands contracted to be sold at one entire price, are conveyed in separate parcels by different instruments, a distinct consideration for each part be set forth in the principal instrument of conveyance, but the consideration money may be apportioned in such manner as the parties please. Apportionment
of consideration
money.

PURCHASES.

*Freeholds and
Copyholds.*

WITNESS,
the vendor in
consideration of
the purchase
money.

say) that the sum of £ part thereof shall be considered as and for the value and purchase of such part of the said hereditaments as are of a freehold nature, and the sum of £ other and the remaining part thereof, as and for the value and purchase of such parts of the said hereditaments as are of customary or copyhold tenure (1). Now THIS INDENTURE WITNESSETH, that in pursuance and execution of the said contract, so far as concerns the freehold part of the said hereditaments, and in consideration of the sum of £ of lawful money (2) of the United Kingdom of Great Britain and Ireland, of English value and currency, to the said (*vendor*) in hand well and truly paid (3) by the said (*purchaser*) at or immediately before the sealing and delivery of these presents, the receipt whereof [and that the same is in full for the absolute purchase of the messuages, lands, tenements, and hereditaments, hereinafter described, as well freehold as copyhold], the said (*vendor*) doth hereby acknowledge, [and of and from the same doth fully and absolutely acquit, release, discharge, and exonerate

Surrender already made.

(1) If a surrender of the copyholds has been previously made, see *ante*, No. XVIII. p. 233. n. 3.

Consideration.

(2) If the consideration be any other than money paid down on the execution of the conveyance, see *ante*, No. XVI. p. 165. 167. 185.

Consideration of copyhold.

(3) If the estimated value of the freehold part of the premises only is to be paid, on the execution of the present deed, and the rest on the completion of the surrender of the copyholds, say,

“ In part of the said sum of so agreed to be paid for the,” &c. *as in the text*, and see No. XVIII. p. 235. n. (2).

the said (*purchaser*) his heirs, executors, administrators, and assigns, and the said hereditaments]. He the said (*vendor*) HATH granted, bargained, sold, aliened, and released, and by these presents doth grant, bargain, sell, alien, release, and confirm unto the said (*purchaser*) and his heirs, ALL (1), &c. or howsoever otherwise the said freehold messuages, lands, tenements, and hereditaments, or any of them, now are, or is, or heretofore were or was situated, tenanted, called, known, described, or distinguished; and also all other the messuages, lands, tenements, and hereditaments, (if any) which are comprised or described in a certain indenture of bargain and sale for a year, hereinafter referred to. TOGETHER with all [houses, out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, benefit and advantage of antient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common of every kind], and all manner of [other] rights, privileges,

PURCHASES.

Freeholds and Copyholds.

Grants and releases the freeholds.

Parcels.

General appurtenances.

(1) Here describe the subject of the conveyance by its ancient and present name, situation, tenancy, &c.—See descriptions applicable to different species of property, INDEX *voce* PARCELS; and see *ante*, No. XV. p. 128. n. (13).

Description of parcels.

If the vendor be entitled to a moiety or other portion only of the estate, see the mode of description, &c. *post*, No. XXVI.

Moiety, &c.

If in remainder or reversion, expectant upon the determination of any prior estate, see No. XXIV.

Remainder, &c.

PURCHASES.

*Freeholds and
Copyholds.*

Reference to
the bargain and
sale for a year.

advantages, appendants, easements, and appurtenances, whatsoever, to the said freehold messuages, lands, tenements, hereditaments, and premises, or any of them, or any part thereof respectively belonging, or in anywise appertaining, [or reputed, or deemed so to be, or with the same or any of them, now or heretofore holden, used, occupied, or enjoyed]. (ALL which said freehold messuages, lands, tenements, and hereditaments, are now in the actual possession of, or legally vested in the said (*purchaser*) by virtue of a bargain and sale (1) to him thereof made by the said (*vendor*) (for five shillings consideration) by indenture bearing or intending to bear date on the day next before the day of the date of these presents, for the term of one year, [commencing from the day next preceding the day of the date of the same indenture], and by force of the statute made for transferring uses into possession), and the reversion and reversions, remainder and remainders of and in the said hereditaments and premises respectively; and all and singular the rents, issues, profits, and proceeds, thereof: AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity, of him the said (*vendor*) in, to, out of, upon, or respecting the said hereditaments and

Lease for year.

(1) See the form of this bargain and sale, Nos. XIII. p. 110, and XIV. p. 117.

premises, or any part thereof. [TOGETHER with all deeds, muniments, and other evidences of title whatsoever, which in anywise relate to the aforesaid freehold hereditaments hereinbefore released, or to the copyhold or customary hereditaments hereinafter covenanted to be surrendered, or any part thereof respectively, either alone or together with other hereditaments or property of inferior value, and which now are or hereafter shall or may be in the possession or lawful power of the said (*vendor*) or his heirs, or of any other person or persons from whom he or they can or may procure the same, without action or suit at law or in equity; and true and attested and other copies, (duly stampd) [when and as often as, and within a reasonable time after the said (*purchaser*) his heirs or assigns, shall require the same(1)] of all other deeds, muniments, and writings, (not being of record) so in his or their custody or power as aforesaid, which in anywise relate to the same freehold and copyhold hereditaments and premises, or any or either of them, or any part of the same respectively, jointly with other hereditaments or property of equal or greater value, such copies, when first required, to be made and delivered at the expense of the said (*vendor*) his heirs, executors, or administrators,

PURCHASES.

*Freeholds and
Copyholds.*

Grant of title
deeds.

And copies.

(1) If a covenant be added for the production of scheduled deeds, add, Schedule.

“ Whether the same be mentioned in the schedule hereunder written or not.”

PURCHASES.

*Freeholds and
Copyholds.*

To HOLD to
the purchaser
in fee-simple.

FURTHER
WITNESS.

Covenant to
surrender the
copyholds.

but all future copies to be made and taken at the expense of the person or persons requiring the same.] To HAVE AND TO HOLD the said freehold messuages, lands, tenements, hereditaments, and premises, hereinbefore and in the said indenture of bargain and sale described, and hereby granted and released, or otherwise assured or intended so to be, with their and every of their rights, members, appendants, easements, and appurtenances, unto "the said (*purchaser*) and his heirs, to and for the use and behoof of him the said (*purchaser*) his heirs and assigns for ever (1)." AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations hereinbefore expressed, and in pursuance of the said agreement as to and concerning the aforesaid copyhold hereditaments, He the said (*vendor*) for himself, his heirs, executors, and administrators, DOth hereby covenant, promise, and agree with and to the said (*purchaser*) his heirs and assigns, by these presents, that he the said (*vendor*) or his heirs shall and will at the next general or other court, which shall be hereafter holden in or for the aforesaid manor of _____, in the said county of _____, or other the manor or manors whereof the lands and hereditaments, next herein-

Dower.

(1) If the conveyance of the freeholds be intended to be made to uses to prevent dower, insert the limitation in No. XXVIII. instead of the words within inverted commas; and if of the copyholds, see *ante*, No. XVIII. p. 240. n. (1).

Wife.

If the vendor's wife be a party, add here a covenant to levy a fine, as in Vol. II. No. XXXI.

after described; or any of them, are holden, sur- PURCHASES.
 render, or cause and procure to be surrendered into Freeholds and
Copyholds.
 the hands of the lord or lords, or lady or ladies of
 the same manor or manors, according to the custom
 or several customs thereof, at the proper cost and
 expense of the said (*purchaser*) his heirs and
 assigns (1); ALL that customary or copyhold Parcels.
 messuage, &c. or by whatsoever other name or
 names, description or descriptions, the same cus-
 tomary or copyhold lands and hereditaments, or
 any or either of them, are, or is, or have, or has
 been called, known, described, or distinguished,
 Together with all [dwelling and other houses, out- General appur-
 houses, buildings, barns, stables, coach-houses, tenances.
 dove-houses, yards, cellars, vaults, areas, benefit
 and advantage of ancient and other lights, ways,
 paths, passages, gardens, orchards, ponds, waters,
 land covered with water, water-courses, woods,
 underwoods, common, and commonable rights of
 every kind, and all and all manner of other] rights,
 privileges, easements, advantages, appendants,
 and appurtenances whatsoever to the said cus-
 tomary or copyhold messuages, lands, tenements,
 hereditaments, and premises, or any of them, or
 any part thereof respectively belonging, or in any-
 wise appertaining, or reputed, or deemed so to
 be, or with the same or any part thereof, now or

(1) If the surrender has been already made, or be made at Surrender al-
 the time of the execution of the deed, see *ante*, No. XVIII. p. ready made.
 237. n. (2).

PURCHASES.

*Freeholds and
Copyholds.*

Surrender to
enure to the
use of the pur-
chaser.

heretofore lawfully holden, used, occupied, or enjoyed]; AND all remainders and reversions of and in the said customary or copyhold hereditaments and premises, and every of them respectively; and all and singular the rents, issues, profits, and proceeds thereof; AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim and demand whatsoever, both at law and in equity of him the said (*vendor*) in, to, out of, upon, or respecting the same hereditaments and premises, or any of them. AND it is hereby declared and agreed by and between the said parties hereto, that the said surrender or surrenders, and all and every other surrender and surrenders at any time heretofore or hereafter made or to be made by him the said (*vendor*), shall be and enure to the use of the said (*purchaser*) his heirs and assigns, for ever, at the will of the lord or lady, for the time being, of the said manor, according to the custom of the same manor, by the rents and services thereof due, and of right accustomed, and that in the meantime and until any such surrender or surrenders shall be perfected or take effect, he the said (*vendor*) and his heirs shall and will stand seised or possessed of all and singular the said hereditaments and premises in trust for him the said (*purchaser*) his heirs and assigns accordingly (1). AND the said

Vendor taking
to uses.

(1) If the vendor took the freeholds with limitations to uses to prevent dower, insert here a covenant by the trustee that he has not incumbered, as *post*, No. XXVII. or Vol. II. No. XXXIV.

(*vendor*) for himself, his heirs, executors, and administrators, doth hereby covenant, grant, declare, and agree with and to the said (*purchaser*) his heirs and assigns, in the manner following, (that is to say) (1), that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, occasioned, or knowingly suffered, or omitted by him the said (*vendor*) (2) to the contrary, he the said (*vendor*) at the time of the sealing and delivery of these presents, is lawfully, rightly seised, in his demesne as of fee, in his own right, and to his own use, of all and singular the freehold messuages, lands, tenements, hereditaments, and premises, hereinbefore granted and released, or intended so to be, as of, in, and for a good, perfect, clear, absolute, and indefeasible estate of inheritance, in fee-simple, in possession, and in severalty, and also seised or otherwise legally and equitably intituled unto the said customary or copyhold messuages, lands, tenements, hereditaments, and premises, hereby covenanted or

PURCHASES.

Freeholds and Copyholds.

Covenant by the vendor that he is seised in fee of the freeholds.

And in fee according to the custom, &c. of the copyholds.

(1) If the wife of the vendor be a party, add here a covenant to levy a fine, see *post*, Vol. II. No. XXXI. and make the covenants for the title accord as in that precedent.

Wife.

If the estate was conveyed to the vendor, and a trustee, with limitations to uses to prevent dower, make the covenants for title accord with those in Vol. II. No. XXXIV.

Trustee.

(2) If the vendor took by devise or by descent, add,

“ Or the said (*devisor*) deceased, or (as the case may be) any of the executors of the said (*vendor*).”

Vendor taking by descent, &c.

And see *ante*, No. XV. p. 141. n. (39).

PURCHASES.

*Freeholds and
Copyholds.*

Hath right to
release and
surrender.

agreed to be surrendered, and every part thereof, with the appurtenances, as of a good, sure, perfect, and indefeasible estate of copyhold inheritance in fee-simple, at the will of the lord, according to the custom of the said manor of _____, or other manor or manors whereof the same respectively are holden, without the said estates or premises respectively, being subject to any [trust, condition, power of revocation, or of limiting any new or other use or uses, or any other] qualification, restriction, matter, or thing whatsoever, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same respectively, or any of them in any manner howsoever, (leases and agreements for leases, of which the said (*purchaser*) hath notice, and the customary rents, dues, and services to be paid, rendered, or performed respectively for or in respect of the copyhold premises only excepted). AND also, that [for and notwithstanding any such act, deed, matter, or thing as aforesaid], he the said (*vendor*) now hath in himself full power, and lawful and absolute right and title to grant, bargain, sell, release, and confirm all and singular the said freehold hereditaments and premises, and to surrender or procure to be surrendered the said customary or copyhold hereditaments and premises by these presents granted and released, and covenanted to be surrendered respectively, or intended so to be as aforesaid, and the inheritance and possession of the same respectively, with their respective ap-

purtenances, to and for the use, behoof, and benefit of the said (*purchaser*) his heirs and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents. **PURCHASES.**
Freeholds and Copyholds.
 AND further, that (1) he the said (*purchaser*) his heirs and assigns, shall or lawfully may, immediately upon the sealing and delivery of these presents, and at all times thereafter, enter into and upon, and hold, possess, and enjoy all and singular the said freehold and copyhold hereditaments and premises respectively, with their and every of their respective rights, members, and appurtenances, and receive and retain the rents, issues, profits, and proceeds thereof, to and for his and their own use and benefit, without any manner of hindrance, interruption, disturbance, claim, or demand whatsoever, by the said (*vendor*) or his heirs, or any person or persons now or hereafter having or rightfully claiming any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or concerning the same, or any part thereof, from, through, under, or in trust for him or them (2), [other than under, or by virtue of, and so far as respects any such leases or agreements for leases as aforesaid]. **That the purchaser shall quietly enjoy.**
 AND that free and clear, and clearly, and absolutely **Free from incumbrances.**

(1) If the conveyance be to uses for preventing dower, this covenant will be more correct if framed agreeably to that *post*, No. XXVIII. **Dower.**

(2) If the vendor took by devise or descent, add as *ante*, No. XVI. p. 177. n. (19). and *ante*, p. 269. n. (2). **Vendor taking by descent, &c.**

PURCHASES.

Freeholds and
Copyholds.

discharged and exonerated or otherwise, by and at the expense of the said (*vendor*) his heirs, executors, or administrators, effectually defended, protected, and indemnified of, from, and against all former and other [gifts, grants, bargains and sales, releases, surrenders, settlements, mortgages, demises, leases, contracts, devises, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, rights and titles of or to dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king, or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore or hereafter have been, or shall or may be made, created, executed, occasioned, or suffered by the said (*vendor*) or his heirs (1), or any other person or persons now or hereafter rightfully claiming, or possessing any estate, right, title, or interest, either at law or in equity, from, through, under, or in trust for him, them, or any of them, or by or through his, their, or any or either of their acts, defaults, means, consent, or privity, (such leases and agreements,

Vendor taking
by descent. &c.

(1) If the vendor took by descent or devise, add *as ante*, p. 269. n. (2).

and customary fines, heriots, rents, and services respectively as aforesaid, to become due or payable in respect of the said customary or copyhold premises, or any of them, only excepted). AND moreover, that he the said (*vendor*) and his heirs, and all and every other persons or person, now or at any time hereafter rightfully claiming, or having title to claim any estate, right, title, charge, or interest at law or in equity, in, to, out of, upon, or respecting the hereditaments and premises hereby granted and released, and covenanted to be surrendered, or otherwise assured respectively, or intended so to be, or any part thereof, from, through, under, or in trust for him or them (1), (other than under or by virtue of such leases or agreements for leases as aforesaid, so far as respects their respective estates or interests under or by virtue of the same) shall and will from time to time, and at all times hereafter upon every reasonable request, and at the costs and expense of the said (*purchaser*) his heirs or assigns, make, do, acknowledge, levy, suffer, execute, and perfect, [or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected, with all convenient and due expedition], all and every such further and other lawful and reasonable acts, deeds, conveyances, matters, and things whatsoever, [whether by surrender or surrenders, fine or fines, with or without proclamations, com-

PURCHASER.

*Freeholds and
Copyholds.*

Covenant for
further as-
surance.

(1) See *ante*, p. 242. n. (1).

PURCHASES.

*Freeholds and
Copyholds.*

mon recovery or common recoveries, feoffment, release, confirmation, declaration or limitation of or to any use or uses, or other assurance or assurances], for the further, better, more perfectly, and absolutely, or satisfactorily conveying, confirming, and assuring the same freehold and copyhold hereditaments and premises respectively, or any part or parcel thereof, and the possession, reversion, and inheritance of the same, with their respective rights, members, appendants, and appurtenances unto, or to and for the use, behoof, and benefit of the said (*purchaser*) his heirs and assigns, free from incumbrances as aforesaid, in such manner and form as he the said (*purchaser*) his heirs or assigns, or his or their counsel in the law, (being of the degree of a barrister) shall respectively require or advise, [and prepare and tender (if the nature thereof permit) for his or their signature and execution; so that such further assurance or assurances, or any of them, do not contain nor imply any further or other warranty or covenant, than against or on the part of the person or persons who shall be required to make or execute the same, his, her, or their devisors, ancestors, heirs, executors, and administrators, and his, her, or their own respective acts, deeds, omissions, or defaults; and so that the person or persons who shall be required to make or execute any such assurance or assurances, be not obliged to go from his, her, or their then place or respective places of abode for the making or executing the same, (except only to the manor

or manors, whereof the copyhold hereditaments are holden, so far as regards the same copyhold hereditaments), without a reasonable and sufficient sum being previously paid, tendered, or secured to him, her, or them, for or in respect of his, her, or their time, trouble, and expenses (1)]. IN WITNESS, &c.

PURCHASES.

*Freeholds and
Copyholds.*

(1) If any doubt subsists as to the amount of the fine, &c. payable in respect of the copyhold premises, add as in p. 249, n. (1). Doubts as to
fines, &c.

If the title deeds are not to be delivered to the purchaser, add or prepare by separate deed a covenant for their production, as *ante*, p. 196.

If any of the copyhold lands be so intermixed with the freehold, as to render it doubtful whether some of them may not have been included in the grant of the freeholds (or vice versa), it will be proper (as well to guard against a constructive forfeiture by their being conveyed as freeholds, as to secure to the purchaser an equitable right to them, in default of their being surrendered), to add a recital and declaration to the following effect:

“ AND WHEREAS the copyhold lands and hereditaments so purchased by the said (*purchaser*) as aforesaid, are so intermixed with such of the said freehold lands and hereditaments as are situated in the common field of (*or as the case may be*) that it is uncertain whether some parts thereof may not have been included in the grant and release hereinbefore made of the same. Now it is hereby expressly provided and declared by the said (*vendor*) that the grant, and release or other assurance hereinbefore made of the hereditaments, which are hereinbefore mentioned or described to be as of a freehold nature, shall not extend or be deemed or construed to extend to or comprise, [nor were nor was the same meant or intended to extend to or comprise, convey,] or in anywise affect any copyhold or customary lands or hereditaments (if any) which may happen to have been

Copyholds not
to be prejudiced
by the grant of
the freeholds,
&c.

PURCHASES. described or mentioned therewith, or with any of them; but that the same copyhold or customary lands and hereditaments, shall be and were meant and intended to be solely comprised in, [and it is hereby declared and agreed, that the same shall be deemed and construed to be comprised and included in, and be equitably or otherwise bound by] the covenant hereinbefore contained, for the surrender of copyhold or customary lands and hereditaments, although the same or any of them may have been omitted, out of or from the said covenant, and further, that all and every such of the said hereditaments and premises as are of a freehold nature, and may have been described, or comprised in the said covenant, shall be deemed and construed to be comprised in and concluded and equitably bound by the said grant, release, and assurance hereinbefore contained of the said freehold hereditaments and premises, although the same may have been omitted from or out of the same." IN WITNESS, &c.

Stamp.

The ad valorem duty upon this deed will be in respect of the apportioned value or price of the freeholds—that of the copyholds being payable on the surrender, see *ante*, p. 249. n. (* * *).

Receipt for purchase money to be indorsed.

Form of receipt
for considera-
tion.

"Received, &c. the sum of £ , as or for the consideration money for the purchase of the freehold hereditaments, and the further sum of £ , as or for the consideration money for the purchase of the copyhold premises by the within written indenture expressed to be released and covenanted to be surrendered respectively, making together the full consideration money or sum of £ , within mentioned to be paid by him to me. Witness, &c."

And see No. XVI. p. 185. n. (29).

Provisoes, &c.

For various provisos, &c. to be inserted as occasion may require, see Rider, additions to No. XVI. p. 188. et seq.

PURCHASES.

*Freeholds,
Copyholds,
and Leaseholds.*

No. XXI.

A Conveyance of Freehold, Copyhold, and Leasehold Premises to a Purchaser (1).

Variations, as in margin below.

THIS INDENTURE of two parts, made the day of _____, [in the _____ year of the reign, &c. and] in the year of our Lord _____, BETWEEN (*the vendor*) of, &c. _____ of the one part (2), and

(1) Freehold, copyhold, and *leasehold* lands, &c. are sometimes, to save expense, comprised in the same deed; but this is always unscientific, and generally improper, as one or other, and frequently each of these species of property will, upon the decease of the proprietor, devolve upon a different class of representatives, some of whom must necessarily, in such case, be without the title deeds relating to the property which may devolve upon him; where indeed the eldest son, by the custom of the manor of which the copyholds are holden, is heir as well to those as to the freehold part of the lands, these two species of inheritance may, without much impropriety, be comprised in the same assurance, but not where the copyholds descend otherwise than by the common law, nor should it ever be done in regard to leaseholds, unless to suit some particular intent of the purchaser relative to some immediate family or other arrangement of his property; or where a small part only of the premises are leasehold, and those intermixed with or adjoining to others of a freehold or copyhold nature, but as this does not unfrequently happen, I have inserted a form comprising all these species of property united.

Conveyance of freeholds, copyholds, and leaseholds, by same assurance improper.

(2) If the vendor's wife be entitled to dower, see *post*, Vol. II. Dower. No. XXXI. and *ante*, p. 232, n. (2).

PURCHASES. (*the purchaser*) of, &c. of the other part (1).
 WHEREAS by indentures of lease and release,
 bearing date respectively on or about the
 and days of , which was in the year
 , the release being of parts, and made
 or expressed to be made between A B therein
 mentioned to be of, &c. and by a certain surrender
 made on or about the day of , which
 was in the year , in pursuance of a covenant
 for that purpose contained in the said indenture
 of release, the several freehold and copyhold mes-
 suages, lands, and hereditaments hereinafter de-
 scribed and intended to be hereby granted, re-
 leased, and covenanted to be surrendered respec-
 tively, were, for valuable considerations therein
 mentioned, conveyed and assured unto and to the
 use of the said (*vendor*) his heirs and assigns.
 AND WHEREAS, &c. (2). AND WHEREAS the said
 (*purchaser*) hath contracted with (3) the said
 (*vendor*) for the absolute purchase of all and
 singular the said freehold, copyhold, and lease-
 hold hereditaments, at the sum of £ ;
 and hath requested that the same respectively

Freeholds,
 Copyholds,
 and Leaseholds.

Recital of title.

Of contract for
 the purchase.

(1) If the vendor took to uses to prevent dower, see No. XXXIV.

If the vendor did not take to such uses, but the purchaser is desirous of taking to such uses, see *ante*, No. XXVIII.

If the vendor took with such uses and the purchaser is also to take to like uses, see *post*, No. XXXV.

Leaseholds.

(2) Recite here (shortly) the lease (and assignment *if any*) under which the vendor is entitled.

Auction, &c.

(3) If the estate was sold by public auction, or otherwise than by private contract, see *ante*, No. XVI. p. 163, n. (4).

may be conveyed and assured to him in the manner hereinafter expressed. AND WHEREAS it has been agreed by and between the said (*vendor*) and (*purchaser*) that the said sum of £ so to be paid for the whole of the said hereditaments, shall be apportioned in the manner following, (that is to say) that the sum of £ part thereof shall be considered as and for the value and purchase of such parts of the said hereditaments as are of a freehold and leasehold nature, and the sum of £ other part thereof, as and for the value and purchase of such parts of the said hereditaments as are customary or copyhold (1). NOW THIS INDENTURE WITNESSETH, that in pursuance and execution of the said contract, so far as concerns the freehold part of the said premises, and in consideration of the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, of English value and currency to the said (*vendor*) in hand well and truly paid (2) by the said (*purchaser*) at or immediately before the sealing and delivery of these presents, the receipt whereof [in full for the absolute purchase of the messuages, lands, tenements, and here-

PURCHASES.

*Freeholds,
Copyholds,
and Leaseholds.*

Apportionment
of the consideration
money.

WITNESS, the
vendor in consideration of
the purchase
money.

(1) As to the apportionment of the consideration, see *ante*, Consideration. No. XX, p. 261, n. (3).

This apportionment, however, is required only in respect of the freehold and copyhold part of the premises, and not of the leasehold, see 55 Geo. 3. p. 1569, and *ante*, p. 261, n. (3).

(2) If the consideration be otherwise than money paid at the time of the execution of the conveyance, see *ante*, No. XVI. p. 165, 167, 185. Consideration.

If the consideration for the copyhold is not to be paid till the surrender, see *ante*, No. XX. p. 262, n. (3).

PURCHASES. ditaments hereinafter described, as well freehold
 and copyhold, as leasehold, the said (*vendor*)
 doth hereby acknowledge, [and of and from the
 same doth fully and absolutely acquit, release, dis-
 charge, and exonerate the said (*purchaser*) his
 heirs, executors, administrators, and assigns]. He
 the said (*vendor*) HATH granted, bargained, sold,
 aliened, and released, and by these presents DOTH
 grant, bargain, sell, alien, release, and confirm
 unto the said (*purchaser*) and his heirs, ALL that
 freehold messuage (1), &c. or howsoever otherwise
 the said messuages, lands, tenements, and here-
 ditaments, or any of them, now are, or is, or here-
 tofore were or was situated, tenanted, called,
 known, described, or distinguished; and also all
 other the freehold messuages, lands, tenements,
 and hereditaments, (if any) which are comprised
 in, or described by a certain indenture of bar-
 gain and sale for a year, hereinafter referred
 to. TOGETHER with all [houses, out-houses,
 buildings, barns, stables, coach-houses, dove-
 houses, yards, cellars, vaults, areas, benefit and
 advantage of ancient and other lights, ways,
 paths, passages, gardens, orchards, ponds, waters,
 land covered with water, watercourses, timber

Freeholds,
Copyholds,
and Leaseholds.

Grants and re-
leases the free-
holds.

Parcels.

General appur-
tenances.

Description of
parcels.

(1) Here describe the subject of the conveyance by its an-
cient and present name, situation, tenancy, &c.—See descrip-
tions applicable to different species of property, INDEX *vide*
PARCELS, and *ante*, No. XV. p. 128, n. (13).

Moiety, &c.

If the vendor be entitled to a moiety or other portion only of
the estate, see the mode of description, &c. *post*, No. XXVI.

Remainder, &c.

If in remainder or reversion, expectant upon the determi-
nation of any prior estate, see No. XXIV.

and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common of every kind], and all and all manner of [other] rights, privileges, advantages, appendants, and appurtenances whatsoever to the said messuages, lands, tenements, hereditaments, and premises, or any of them, or any part thereof respectively belonging, or in anywise appertaining, [or reputed, or deemed so to be, or with the same or any of them, now or heretofore holden, used, occupied, or enjoyed]; (ALL which said freehold messuages, lands, tenements, and hereditaments are now in the actual possession of, or legally vested in the said (*purchaser*) by virtue of a bargain and sale (1) to him thereof made by the said (*vendor*) (for five shillings in consideration) by indenture bearing or intending to bear date on the day next before the day of the date of these presents, for the term of one year, [commencing from the day next preceding the day of the date of the same indenture], and by force of the statute made for transferring uses into possession) [and the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises respectively]; and all and singular the rents, issues, profits, and proceeds, of the same : AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity, of him the said (*vendor*), in,

Freeholds,
Copyholds,
and Leaseholds.

Reference to the
bargain and sale
for a year.

(1) See the form of this bargain and sale, No. XIII. p. 110, and XIV. p. 117, and see *ante*, p. 166, n. (22).

PURCHASES.

*Freeholds,
Copyholds,
and Leaseholds.*

Grant of title
deeds.

And copies.

to, out of, upon, or respecting the said hereditaments and premises, or any of them. [TOGETHER with all deeds, muniments, copies of court roll and other evidences of title whatsoever, which in anywise relate to the said freehold hereditaments or to the copyhold premises hereinafter covenanted to be surrendered, or any or either of them, or any part thereof respectively either alone or together with other hereditaments or property of inferior value, and which now are or hereafter shall or may be in the possession or lawful power of the said (*vendor*), his heirs, or of any other person or persons from whom he or they can or may procure the same, without action or suit at law or in equity; and true and attested and other copies, (duly stampd) when [and as often as, and within a reasonable time after] the said (*purchaser*), his heirs or assigns shall require the same (1), of all other deeds, muniments, writings, and evidences, (not being of record) so in his or their custody or power, as aforesaid, which in anywise relate to the same freehold or copyhold hereditaments and premises, or any of them, or any part of the same respectively, jointly with other hereditaments or property of equal or greater value, such copies, when first required, to be made and delivered at the expense of the said (*vendor*), his heirs, executors, or administrators, but all future copies to be made and taken at the expense of the

Schedule.

(1) If a covenant be added for production of scheduled deeds not delivered, add as *ante*, No. XX. p. 265, n. (1).

person or persons requiring the ~~same~~]. To HAVE PURCHASERS.
AND TO HOLD, the said freehold messuages, lands, Freeholds,
tenements, hereditaments, and premises herein- Copyholds,
before and in the said indenture of bargain and and Leaseholds.
sale described, and hereby granted and released To HOLD to the
or intended so to be, with their and every of purchaser in
their rights, members, appendants, and appur- fee simple.
tenances, unto the said (*purchaser*) and his
heirs, to the use and behoof of him the said
(*purchaser*), his heirs and assigns, for ever (1).
AND THIS INDENTURE FURTHER WITNESSETH, that FURTHER
for the considerations hereinbefore mentioned, and WITNESS.
in pursuance of the said agreement as to and con- Covenant to
cerning such parts of the said hereditaments as surrender the
are of copyhold or customary tenure, He the said copyholds.
(*vendor*), for himself, his heirs, executors, and
administrators, DOth hereby covenant, promise,
and agree, with and to the said (*purchaser*), his
heirs and assigns, by these presents, that he the said
(*vendor*) or his heirs, shall and will at the proper
costs and expense of the said (*purchaser*), his heirs
or assigns, at or before the next general or other
court, which shall be hereafter holden in or for
the aforesaid manor of , in the said county
of , or other the manor or manors whereof

(1) If the conveyance of the freeholds be intended to be made Dower.
to uses for preventing dower, insert the limitation given *post*, No.
XXVIII., instead of the words within inverted commas, and
if the copyholds, see *ante*, No. XVIII. p. 240. n. (2).

If the vendor's wife be a party, add here a covenant to levy a Wife.
fine, as in Vol. II. No. XXXI.

PURCHASES.

Freeholds,
Copyholds,
and Leaseholds.

Parcels.

General appurtenances.

the lands and hereditaments, next hereinafter described, or any of them, are holden, surrender, or cause and procure to be surrendered into the hands of the lord or lords, or lady or ladies of the same manor or manors, according to the custom or several customs thereof (at the proper cost and expense of the said (*purchaser*), his heirs and assigns (1); ALL that copyhold or customary messuage, &c. or by whatsoever other name or names, description or descriptions, the same copyhold or customary lands and hereditaments, or any or either of them, are or is or have or has been called, known, described, or distinguished, together with all [dwelling and other houses, out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, benefit and advantage of ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, woods, underwoods, common and commonable rights of every kind, and all and all manner of other] rights, privileges, easements, advantages, appendants, and appurtenances whatsoever to the said customary or copyhold messuages, lands, tenements, hereditaments, and premises, or any of them, or any part thereof respectively belonging, or in anywise appertaining [or reputed, or deemed so to be, or with the same or any of them, now or heretofore

Surrender
already made.

(1) If the surrender has been already made or is to be made at the time of the execution of the conveyance of the freeholds, see *ante*, No. XVIII. p. 237, n. (2).

lawfully holden, used, occupied, or enjoyed]; **PURCHASES.**
 AND all remainders and reversions of and in the
 said hereditaments and premises, and every of
 them respectively; and all and singular the rents,
 issues, profits, and proceeds thereof; AND all the
 estate, right, title, interest, use, trust, property,
 possession, possibility, claim and demand whatso-
 ever, both at law and in equity of him the said
 (*vendor*), in, to, out of, upon, or respecting the
 said customary or copyhold hereditaments and
 premises, or any part thereof. AND it is hereby de-
 clared and agreed by and between the said parties
 hereto, that the surrender or surrenders, so to
 be made as aforesaid, and all and every other
 surrender or surrenders heretofore or hereafter
 made or to be made, of the said customary or
 copyhold hereditaments or any part thereof, by
 him the said (*vendor*) or his heirs, shall be and
 enure to the use of the said (*purchaser*), his heirs
 and assigns, to be holden of the lord or lady, for
 the time being, of the said manor or manors, ac-
 cording to the custom or respective customs there-
 of, by the rents and services therefore due, and of
 right accustomed (1), and that in the mean time,
 and until the same shall have been perfected
 or taken effect, he the said (*vendor*) and his heirs,
 shall and will stand and be seised, possessed of,
 or interested in the said premises, in trust for

*Freeholds,
Copyholds,
and Leasholds.*

Surrender to
enure to the use
of the pur-
chaser.

(1) If the vendor took the freeholds with limitations to a Trustee.
 trustee to prevent dower, insert here a covenant by such trustee
 that he has not incumbered, as in No. XXVII. *post*.

PURCHASES. him the said (*purchaser*) his heirs and assigns :

*Freeholds,
Copyholds,
and Leaseholds.*

Assignment of
leaseholds.

AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations hereinbefore expressed, and in pursuance and performance of the aforesaid agreement on the part of the said (*vendor*), in respect of the said leasehold premises, He the said (*vendor*) HATH granted, bargained, sold, assigned, transferred, and set over, and by these presents DOTH grant, bargain, sell, assign, transfer, and set over unto the said (*purchaser*) his executors, administrators, and assigns, ALL that, &c. so demised [*or assigned as the case may be*] to the said (*vendor*) his executors, administrators, and assigns, for the term [*or residue of the said term*] of years, in and by the said hereinbefore in part recited indenture of lease as aforesaid ; together with all ways, &c. &c. to the said messuages and premises hereby assigned, or any part thereof belonging or in anywise appertaining, and all the estate, right, title, interest, term of years now to come and unexpired, property, possession, claim, and demand whatsoever, both at law and in equity of him the said (*vendor*) of, in, and to the same, and every or any part thereof, together with the said in part recited indenture of lease, [*and assignment (if so)*] and all benefit, and advantage to be had or derived from the same. To HAVE AND TO HOLD the said messuages, &c. hereby assigned, or intended so to be, and every part thereof, with the appurtenances, unto the said (*purchaser*) his executors, administrators, and assigns, from henceforth for and during all

To hold the
purchaser.

the residue and remainder which is or may be now to come and unexpired, of or in the said term of years, by the said in part recited indenture of lease granted as aforesaid, subject nevertheless to the payment of the rent, and the observance and performance of the covenants, clauses, and agreements respectively, in and by the same indenture reserved and contained, which from henceforth, on the tenant or lessee's part, ought to be paid, kept, observed, and performed. AND the said (*vendor*) for himself, his heirs, executors, and administrators, as to and respecting the freehold and copyhold hereditaments and premises hereinbefore released or covenanted to be surrendered respectively, and with and to the said (*purchaser*) his executors, administrators, and assigns, as to and respecting the leasehold premises, hereinbefore assigned, doth hereby covenant, declare, and agree with and to the said (*purchaser*) his heirs, executors, administrators, and assigns, according to the several natures and qualities of the said hereditaments and premises respectively, in the manner following, (that is to say), (1) that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, occasioned, or knowingly suffered, by him the said (*vendor*) (2), to the contrary, he the said (*vendor*) at the time of the sealing and

PURCHASES.

*Freeholds,
Copyholds,
and Leaseholds.*

For the residue
of the term.

Covenant by
the vendor that
he is seised in
fee of the free-
holds.

(1) If the estate was conveyed to the vendor, and a trustee to uses to prevent dower, make the covenants for the title accordant with those in Vol. II. No. XXXIV.

Trustee.

(2) If the vendor took the title otherwise than as a purchaser, see No. XX. p. 269, n. (2).

Vendor taking
by descent, &c.

PURCHASES.

*Freeholds,
Copyholds,
and Leaseholds.*

And in fee according to the custom, &c. of the copyholds.

delivery of these presents, is lawfully, rightly, and absolutely seised, in his demesne as of fee, in his own right, and to his own use, of all and singular the freehold messuages, lands, tenements, hereditaments, and premises, hereinbefore granted and released, or intended so to be, as of, in, and for a good, perfect, clear, absolute, and indefeasible estate of inheritance, in fee-simple in possession, and in severalty, and is in like manner seised, or otherwise legally and equitably intitled unto the copyhold or customary messuages, lands, tenements, hereditaments, and premises, hereby covenanted or agreed to be surrendered, and every part thereof, with the appurtenances, as of a good, sure, perfect, and indefeasible estate of copyhold inheritance to him and his heirs, at the will of the lord, according to the custom of the said manor of _____, or other manor or manors whereof the said premises respectively are holden, without the same being subject or liable to any trust, condition, power of revocation, or of limiting any new or other use or uses, or any other qualification, restriction, matter, or thing whatsoever, expressed or implied, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the said title or premises in any manner howsoever, (leases and agreements for leases, of which the said (*purchaser*) hath notice, at the time of sealing and delivery of these presents, and the customary rents, dues, and services to be paid or performed respectively for or in respect of the said copyhold premises only ex-

cepted). [AND that for and notwithstanding any such act, deed, matter, or thing as aforesaid, the said hereinbefore in part recited indenture of lease, is, at the time of the sealing and delivery of these presents, a good, valid, effectual, and subsisting lease, both at law and in equity, of and for the said messuages, &c. and premises therein comprized, and that the said term of years mentioned to be thereby granted of or in the same, is still in being, and has not at any time been forfeited, merged, extinguished, surrendered, or otherwise become void or voidable (save only as to so much thereof as has now expired by efflux of time).] [AND moreover, that all rents, taxes, duties, and assessments, payable for or in respect of, and chargeable upon the said premises, have been well and duly paid and satisfied up to the day of now last past, and that all covenants and agreements in the said indenture of lease contained, on the part of the said (*vendor*) or other tenant, lessee, or assignee of the said premises, to be observed or performed in respect of the same, have been and are well and truly performed, observed, fulfilled, and kept up to the time of the sealing and delivering of these presents.] AND also that [for and notwithstanding any such act, deed, matter, or thing as aforesaid], he the said (*vendor*) now hath in himself, full power, and lawful and absolute right and title to grant, bargain, sell, release, and confirm all and singular the said freehold hereditaments and premises, and to surrender, or procure to be surrendered, the said

PURCHASES.

*Freeholds,
Copyholds,
and Leaseholds.*

And hath right
to convey, &c.

PURCHASES.

*Freeholds,
Copyholds,
and Leaseholds.*

That the purchaser shall quietly enjoy.

copyhold or customary hereditaments and premises hereby granted and released, and covenanted to be surrendered respectively, or intended so to be as aforesaid, and the inheritance and possession of the same respectively, with their respective appurtenances, to and for the use, behoof, and benefit of the said (*purchaser*) his heirs and assigns, and to grant, bargain, sell, assign, and transfer all and singular the leasehold messuages or tenements, lands, hereditaments, and premises hereby assigned, or mentioned, or intended so to be, and every part and parcel thereof, with their respective appurtenances, unto the said (*purchaser*) his executors, administrators, and assigns, for all the residue now to come and unexpired by efflux of time, of and in the said term of years, in the manner aforesaid, and according to the true intent and meaning of these presents. AND further, that (1) it shall be lawful for him the said (*purchaser*) his heirs and assigns, immediately upon the sealing and delivery of these presents, and at all times thereafter, to enter into and upon, and hold, possess, and enjoy, all and singular the said freehold and copyhold hereditaments and premises, with their and every of their respective rights, privileges, and appurtenances, and to receive and retain the rents, issues, profits, and proceeds, thereof, for his and their own proper use and benefit, and for him the said (*purchaser*) his executors,

Dower.

(1) If the conveyance is to be to uses for preventing dower, this covenant will be more correct if framed agreeably to the corresponding covenant in No. XXVIII.

administrators, and assigns, in like manner to enter into and upon, and hold and enjoy the said leasehold messuages and premises during all the residue and remainder now to come and unexpired, by lapse of time, of the said term of years so granted or intended to be granted thereof, or therein, as aforesaid, to and for his and their own use and benefit, without any manner of hindrance, interruption, disturbance, claim, or demand whatsoever, by or from the said (*vendor*) or his heirs, executors or administrators, or any person or persons now or hereafter having or rightfully claiming any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or concerning the said premises, or any part thereof respectively, from, through, under, or in trust for him or them (1), (other than through, under, or by virtue of and so far as respects any such leases or agreements for leases as aforesaid). AND that free and clear, and freely, clearly, and absolutely discharged and exonerated or otherwise, by and at the expense of the said (*vendor*) his heirs, executors, and administrators, effectually defended, protected, and indemnified of, from, and against all former and other [gifts, grants, bargains, and sales, releases, settlements, mortgages, surrenders, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate, right, and title of

PURCHASES.

*Freeholds,
Copyholds,
and Leaseholds.*

Free from incumbrances.

(1) If the vendor took otherwise than as a purchaser, see *ante*, No. XVI. p. 177, n. (19.)

Vendor taking by descent, &c.

and agreements therein contained, which on the tenant, or lessee's part, are from henceforth to be performed and observed respectively during the residue of the aforesaid term. AND moreover, that he the said (*vendor*) his heirs, executors, and administrators, and all and every other persons or person, now or at any time hereafter rightfully claiming, or having title to claim any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or respecting the freehold, copyhold, and leasehold hereditaments and premises hereby granted, released, assigned, and covenanted to be surrendered respectively, or intended so to be, or any part thereof, from, through, under, or in trust for him or them (1), (other than under or by virtue of such leases or agreements for leases as aforesaid, so far as respects their respective estates or interests under or by virtue of the same) shall and will from time to time, and at all times hereafter upon every reasonable request, and at the costs and expense of the said (*purchaser*) his heirs, executors, administrators, or assigns, make, do, acknowledge, levy, suffer, execute, and perfect, [or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected, with all due expedition,] all and every such further and other lawful and reasonable acts, deeds, conveyances, matters, and things whatsoever, [whether by bargain and sale, release, surrender, assignment, fine, common recovery, deed enrolled, feoffment, confirmation, declaration, or limitation of or to

PURCHASES.

*Freeholds,
Copyholds,
and Leaseholds.*

Covenant for
further as-
surance.

(1) See *ante*, p. 269, n. (2.)

PURCHASES.

*Freeholds,
Copyholds,
and Leaseholds.*

any use or uses, or other assurance or assurances], for the further, better, more perfectly, and absolutely, or satisfactorily granting, releasing, surrendering, conveying, confirming, and assuring the same freehold and copyhold hereditaments and premises respectively, or any part or parcel thereof, and the possession, reversion, and inheritance of the same, with their respective rights, members, appendants, and appurtenances to and for the use, behoof, and benefit of the said (*purchaser*) his heirs and assigns; and for further, better, more effectually, or satisfactorily assigning and assuring the said leasehold premises, with their appurtenances, for and during all the residue and remainder of the said term of years, which shall then be to come and unexpired therein, by efflux of time, unto the said (*purchaser*) his executors, administrators, and assigns, free from incumbrances as aforesaid, in such manner and form as he the said (*purchaser*) his heirs, executors, administrators, or assigns, or his or their counsel in the law, (being of the degree of a barrister) shall advise and require, [and prepare and tender (if the nature thereof permit) for his or their signature and execution; so that such further assurance or assurances, or any of them, do not contain, nor imply any further or other warranty or covenant, than against or on the part of the person or persons who shall be required to make or execute the same, his, her, or their devisors, ancestors, heirs, executors, and administrators, and his, her, or their own respective acts, deeds, omissions, or defaults; and so that the per-

son or persons who shall be required to make or execute any such assurance or assurances, be not obliged to go from his, her, or their then place or respective places of abode for the making or executing the same, (except only to the manor or manors, whereof the copyhold hereditaments are holden, so far as regards the same copyhold hereditaments, without a reasonable and sufficient sum being previously paid, tendered, or secured to him, her, or them, for or in respect of his, her, or their time, trouble, and expenses (1). AND the said (*purchaser*) for himself, his heirs, executors, and administrators, DO TH hereby covenant, promise, and agree, with and to the said (*vendor*) his heirs, executors, and administrators, in the manner following (that is to say) that he the said (*purchaser*) his executors, administrators, and assigns, or some or one of them, shall and will, from time to time, and at all times hereafter, during the residue and remainder of the said term of years hereby assigned, (or during such periods thereof as the said (*purchaser*) shall lawfully and quietly enjoy the said assigned premises, under or by virtue of these presents) well and truly pay the said yearly rent of £ in and by the said hereinbefore in part recited indenture of lease reserved, together with all rates, taxes, and duties chargeable upon the

PURCHASES.

*Freeholds,
Copyholds,
and Leaseholds.*

Covenant by
purchaser to
pay rent, &c.
of leaseholds.

(1) If any doubts subsist as to the amount of the fines, &c. payable to the lord in respect of the copyhold, see *ante*, p. 249, n. (1.) Doubts as to fines, &c.

If the title deeds be not delivered to the purchaser, add covenant for production, as *ante*, p. 196. Title deeds.

PURCHASES.

*Freeholds,
Copyholds,
and Leaseholds.*

said premises, which shall respectively become due from and after the said day of , and also well and duly perform and observe all and singular the covenants and agreements therein contained, which from henceforth, on the tenant or lessee's part, are or ought from time to time to be observed or performed for or in respect of the said premises, during the residue or remainder of the said term; [and of and from the same rents, covenants, and agreements respectively, and all actions, suits, and proceedings, which shall or may be lawfully prosecuted or commenced for non-payment, non-observance, or non-performance thereof respectively, or of any of them, and all costs, damages, and expenses, which shall or may be incurred by reason thereof, shall and will, from time to time, and at all times, absolutely and effectually protect and indemnify the said (*vendor*) his executors and administrators, and his and their lands, tenements, goods, chattels, and effects.]
IN WITNESS, &c.

Intermixture of
copyholds with
freeholds.

If it be apprehended that any of the copyholds may have been comprised in the description of the freehold, or *vice versâ*, add as in No. XX. p. 275.

Stamp.

As to the stamp, see *ante*, p. 249, n. (30.)

Provisoes, &c.

For provisos, &c. to be inserted under particular circumstances, see the variations subjoined to No. XVI. p. 188, *et seq.*

No. XXII.

Conveyance by Tenant in tail in Possession to a Purchaser (1) of Freeholds.

Variations where the Reversion is in himself, and where in a Stranger.

Also where the Tenant to the Præcipe for suffering a Recovery is made by Fine.

Where the Vendor is Tenant in tail in Remainder or Reversion, and the Tenant for Life joins in making the Tenant to the Præcipe.

Where it is an Equitable Recovery, the Tenant in tail having only a Trust Estate.

Where part of the Premises are Copyhold, &c.

And see also margin of the notes below.

THIS INDENTURE of three parts, made the

(1) In order to bar an entail, it is necessary that the tenant in tail should either annex a warranty to his grant, levy a fine, or suffer a recovery, as no other mode of conveyance, unless a bargain and sale under a commission of bankruptcy, will pass a greater estate than a base or qualified fee, viz. a fee to continue so long only as the tenant in tail shall have issue.

Modes of barring
an entail.

A *warranty* is seldom to be depended upon, as it will bar the issue, only when they take assets by descent, and those in remainder or reversion without assets, only when they are heirs to the warrantor. See Co. Lit. 370, n. (1). And though a *fine* will bar the entail and pass a fee to the cognisee, where the reversion is in the tenant in tail, yet a fine is attended with this

PURCHASES.

day of

, in the

year of the

Estate Tail.

objection, that should the reversion have been encumbered by the tenant in tail, or any of his ancestors, the fine, by uniting the reversion to the possession, will let in such incumbrances upon the purchaser; where, therefore, there is any reason to suspect this to have been the case, a recovery should be suffered, even though the reversion be in the tenant in tail himself, but without some suspicion of this sort, the court will not, it seems, compel a tenant in tail to suffer a recovery, when the entail is barrable by fine alone. See *Sterling v. Trevor*, 7 Ves. jun. 497.

And where the reversion or any remainders are vested in third persons, they can be barred only by *recovery*; this, therefore, is in general had recourse to as the most effectual mode of conveying an estate tail, and is that here adopted.

Equitable estates.

And although the estate of the tenant in tail be an equitable or trust estate only, it is now held that a recovery must be suffered of it, in order to bar the entail, *Legat v. Sewell*, 1 P. Wms. 91. *Radford v. Wilson*, 3 Atk. 815. *Barnaby v. Griffin*, 3 Ves. jun. 266. And the form of making the tenant to the præcipe, and of the ulterior process to bar the entail, will be precisely the same as if he had the legal estate.

Copyholds.

And where a recovery is necessary to bar an entail of copyholds, it will be equally requisite to be suffered of an equitable as of a legal estate, *Botley v. Allington*, 1 Brow. Ch. Ca. 72. 1 Prest. 155, except in cases of bankruptcy; notwithstanding a contrary opinion which appears to have been entertained by Lord Hardwicke with respect to an equitable estate of copyholds, who appears to have thought that a surrender is in all cases sufficient to bar an equitable entail of copyholds. See *Radford v. Wilson*, 3 Atk. 815.

But if the entail (or rather quasi entail) be of a life estate only, the remainder may, it should seem, be barred by a common conveyance, since a recovery cannot be suffered of such estate. See *ex parte Steine*, 6 Ves. 158.

Issue in tail.

And it may be noticed that the issue or heir in tail is equally capable of acquiring the fee by common recovery, as the proper tenant in tail himself, but this privilege is confined solely to him and the heir in tail.

reign, &c. and in the year of our Lord

(1), PURCHASES.

Estate Tail.

In some cases, however, a fine may be preferable even to a recovery, as it will operate as an estoppel where a recovery will not. A fine may also be levied by a tenant in tail in remainder, who cannot, as has been already observed, suffer a recovery without the concurrence of the tenant of the immediate freehold. And as a fine may also be levied in the vacation, whilst a recovery can be suffered in term time only, it may in some cases (as where there is an apprehension of the tenant in tail dying before a recovery can be completed), be prudent to have both a fine and a recovery, by making the tenant to the præcipe by a fine levied preparatory to the recovery, in which case, as they will both together form but one assurance, the entail will be barred, although the tenant in tail should die before the recovery be perfected.

Where fine preferable.

This, however, must be understood where the lands are of freehold tenure, for if they are holden in ancient demesne, a fine there will not bar, it being necessary for this purpose that it should be levied with proclamations under the statute of Hen. 7. but a fine levied in the Court of Ancient Demesne is not a fine within that statute.

Where a vendor is tenant in tail, and a recovery is necessary to pass a clear inheritance, it is sometimes proper that he should first suffer the recovery to the use of himself in fee, and then by lease and release convey the land to the purchaser, instead of declaring the uses of the recovery to the purchaser, in the first instance, by the deed for making a tenant to the præcipe—see Bradl. Point. Bk. 50; and this may perhaps, in all cases, be reasonably required by a purchaser on account of its lessening the expense of his conveyance. In which case the deed for making a tenant to the præcipe, may be by bargain and sale or lease and release, in the form given in WILDE'S SUPPLEMENT, Vol. I. No. XXXVI. p. 293, and the lease and release to the purchaser will be in the common form of a conveyance by those instruments. But where the estate is conveyed to the purchaser by the recovery deed, which is the more usual mode, the above will be the proper form of the assurance.

Recovery before conveyance.

(1) A deed to make a tenant to the præcipe for suffering a Date.

PURCHASES.	BETWEEN (<i>the vendor</i>) (1), (i. e. <i>the tenant in tail</i>)
<u>Estate Tail.</u>	of, &c. of the first part (2), (<i>the tenant to the</i>
	<i>præcipe</i>) (3) of, &c. of the second part, and
	(<i>the purchaser</i>) of, &c. of the third part.
Recital of title.	WHEREAS, by indentures of lease and release (4)

recovery should be dated within the term, or before the end of the great sessions or assizes, in which the recovery is suffered—see 14 Geo. II. c. 20.

Wife.

(1) If the wife of the vendor have a title to dower out of the land to be conveyed, make her a party with her husband, and vary the draft agreeably to Vol. II. No. XXXI. margin (*w, w, &c.*).

If the conveyance be intended to be taken to uses for preventing a title to dower, see *post*, No. XXVIII.

Where tenant
for life joins.

(2) Where a tenant in tail is such of the remainder or reversion only after a prior estate for life, he cannot make a good tenant to the *præcipe* for suffering a legal recovery without the concurrence of the tenant for life, as it is necessary that the writ of covenant should be brought against the tenant of the freehold in possession, in which case make the tenant for life of the first part, and the tenant in tail of the second part.

Who may be
tenant to
præcipe.

(3) Any person may be named tenant to the *præcipe* for suffering the recovery; but to prevent the expense of a *dedimus potestatem*, it will be proper that some person should be named who resides within a convenient distance of the court in which the recovery is intended to be suffered. Two persons are sometimes named as tenants to the *præcipe*, to guard against the death of one tenant before the recovery be completed; but as the writ of entry must in this case be brought against them both, and the death or want of appearance and voucher by either of them, would render the recovery ineffectual as to so much of the legal estate as was vested in him, there seems to be little use, if not some degree of danger, in this precaution, unless where it is necessary that several recoveries should be suffered in different counties, in which case, for the reason before adverted to, there may be a propriety in naming as many tenants to the *præcipe*, as there may be recoveries to be suffered.

(4) If the vendor derive his title under a will, say,

Title under will.

“Whereas under or by virtue of the last will and testa-

bearing date the and days of , PURCHASES.
which was in the year , the release being of Estate Tail.
parts, and made or expressed to be made
between, &c. the messuages, lands, tenements, and
hereditaments, therein mentioned, and hereinafter
more particularly described, were conveyed and
assured unto (1) the said (*trustees*) and their heirs,
TO THE USE of (*the tenant for life*), of, &c. for the
term of his natural life, with remainder to the use
of the said (*tenant in tail*), and the heirs male of
his body, lawfully begotten, with divers remainders
over. AND WHEREAS the said (*tenant for life*) de-
parted this life on or about the day of ,
whereby the said (*tenant in tail*) became seised of
the said hereditaments and premises as for an
estate of inheritance in fee tail in possession. AND
WHEREAS the said (*purchaser*) hath contracted
with (2) the said (*vendor*) for the absolute pur-

ment of A B, late of _____, deceased, bearing date the day of _____, the said (*vendtor*) is seized to him and his heirs of an estate of inheritance in fee-tail, in possession of the messuages, lands, tenements, and hereditaments hereinafter described."

(1) If the reversion be in the tenant in tail himself, and the entail be intended to be barred by a fine, say, Reversion in
tenant in tail.

“Unto and to the use of the said (*tenant in tail*), and the heirs of his body lawfully begotten, with remainder in default of such issue, TO THE USE of the said (*tenant in tail*), his heirs, and assigns for ever.”

(2) If the estate was sold by public auction, make the recital Auction. of the contract, and of the payment of the purchase money, conformably to No. XVI. p. 163, n. (4).

And if the estate be sold by the direction of the Court of Sale by order
of court.

PURCHASES. chase of the inheritance in fee-simple of the said
Estate Tail. messuages, lands and hereditaments, at or for the
 price or sum of (1), and hath requested
 that the same may be conveyed and assured to him
 in the manner hereinafter expressed (2). Now
THIS INDENTURE WITNESSETH, that in pursuance
 and execution of the said contract, and in con-
 sideration of the sum of of lawful
 money (3) of the United Kingdom of Great
 Britain and Ireland, of English value and currency,

Witness, the
 vendor in con-
 sideration of
 the purchase
 money.

Chancery, and the purchase money is to be paid into the Bank,
 or of the Court of Exchequer, and the money is to be paid to the
 Deputy Remembrancer, see the variation subjoined to the same
 precedent, p. 188, Rider (A).

Consideration a
 transfer of
 money in the
 funds.
 Annuity.

(1) If the consideration be the transfer of money in the funds,
 see *ante*, No. XVI. p. 165, n. (6).

If it be the grant of an annuity during the life of the vendor,
 see *ibid*.

Purchase money
 retained.

(2) If part of the purchase money be retained until the re-
 covery be perfected, or for any other reason, see *ante*, No. XVI.
 p. 165, n. (7).

Sub-purchase.

If the original purchaser has parted with his interest in the
 premises before a conveyance has been executed, see *ante*, No.
 XVI, p. 164, n. (5).

Tenant for life.

If the tenant for life agrees to join for the purpose of making
 good tenant to the præcipe, but without prejudicing his own
 estate, add,

“AND WHEREAS the said (*tenant for life*) has agreed to
 join in the said conveyance for the purpose of enabling the
 said (*vendor*) to bar the said entail, but without prejudice to
 the estate for life of him the said (*tenant for life*) therein.”

Consideration
 paid otherwise
 than in money.

(3) If the consideration be paid otherwise than in money, or
 at any other time than at the execution of the conveyance, see
 the variations subjoined to No. XVI. p. 167, n. (8).

to the said (*vendor*) in hand well and truly paid **PURCHASES.**
 by the said (*purchaser*) at or immediately before
Estate Tail.
 the sealing and delivery of these presents, the
 receipt whereof, [and that the same is in full for
 the absolute purchase of the inheritance in fee-
 simple in possession, of the messuages, lands,
 tenements, and hereditaments hereinafter de-
 scribed, the said (*vendor*) doth hereby expressly
 acknowledge, and of and from the same doth
 fully and absolutely acquit, release, discharge, and
 exonerate the said (*purchaser*), his heirs, executors,
 administrators, and assigns, and the said heredita-
 ments, by these presents]. And for docking (1),
 barring, and destroying all estates tail of and in the
 said messuages, lands, tenements, and heredita-
 ments, and all remainders or reversions expectant or
 depending thereupon, and all conditions and colla-
 teral limitations (if any) annexed to or affecting the
 same (2), and for conveying and assuring the same
 to the use of the said (*purchaser*) and his heirs, in

(1) If the reversion be in the tenant in tail himself, and it be **Reversion in**
 intended to bar the estate tail by a fine, omit these words, and **tenant in tail.**
 also the statement of the consideration of 5s. paid by the tenant
 to the præcipe to the vendor, and make the conveyance to the
 purchaser in the usual manner, instead of to the tenant to the
 præcipe.

(2) If the vendor's wife be entitled to dower, add, **Wife.**

“ And for barring and extinguished all dower, and right
 and title to dower of the said (*wife*) the wife of the said
 (*vendor*) of and in the same messuages,” &c.

PURCHASES. fee-simple (1) and in consideration of the sum of
Estate Tail 10s. (2) of such lawful money as aforesaid, to the
 said (*vendor*) (3) in hand, at the same time paid
 by the said (*tenant to the præcipe*) (the receipt

Trustee.

(1) If the conveyance be intended to be made to uses for preventing dower, instead of "to the use of the said (*purchaser*) and his heirs in fee simple," say,

"To, upon, and for the uses, trusts, intents and purposes hereinafter expressed, of or concerning the same."

Consideration
 not necessary to
 vest estate in
 the tenant to
 the præcipe.

(2) No consideration is necessary to vest the estate in the tenant to the præcipe for the purpose of enabling him to defend the writ of entry, unless where the freehold is conveyed to him by a bargain and sale, which requires a pecuniary or other valuable consideration to give it the effect of raising an use, but as the payment of a consideration is usually expressed in the deed, it might, by a juvenile practitioner, be considered as defective without it; to prevent, therefore, the expense and delay which might accrue to the client by any controversy respecting the propriety of omitting what it has been customary to insert, I have in this, as well as in most other instances which occur in the present volumes, avoided deviating from the established forms; at the same time, however, I have thought it incumbent upon me to notice any thing superfluous which is to be found in them, in order to enable the solicitor to save to his client, by every practical compression of the assurance, any expense which may be avoided without endangering his more essential interests.

Wife.

(3) Or,

"And his wife."

Tenant for life.

Or if tenant for life be a party, add,

"And the said (*tenant for life*) respectively, the receipt whereof is hereby acknowledged, the said (*tenant for life*) at the request of the said (*vendor*) testified by his being a party to and sealing and delivering these presents, and the said (*vendor*) HAVE, and each of them HATH, (according to their respective estates and interests), granted," &c.

whereof is hereby acknowledged), he the said **PURCHASES.**
(vender) (1), at the request and by the direction **Estate Tail.**
of the *(purchaser)* testified by his being a party to,
and sealing and delivering these presents, **HATH** Grants and re-
granted, bargained, sold, aliened, and released, &c.
and by these presents **DOTH** grant, bargain, sell, **Parcels.**
alien, release, and confirm unto the said *(tenant to*
the præcipe) and his heirs, **ALL, &c.** (2), or how-
soever otherwise the said messuages, lands, tene-
ments, and hereditaments, or any of them, now
are, or is, or heretofore were or was situated,
tenanted, called, known or described; and also
all other the messuages, lands, tenements, and
hereditaments (if any) comprised in the indenture
of bargain and sale for a year, hereinafter referred
to, **TOGETHER** with all [out-houses (3), buildings, **General ap-**
barns, stables, coach-houses, dove-houses, yards, **purtenances.**
cellars, vaults, areas, benefit and advantage of
ancient and other lights, ways, paths, passages,
gardens, orchards, ponds, waters, land covered
with water, water-courses, timber and other trees,
woods, underwoods, and the ground and soil
thereof, mines, quarries, rights and privileges of
common of every kind, and all and all manner

(1) Or,

Wife.

“ They the said *(vender)* and his wife, **HAVE** and
each of them **HATH,**” &c.

(2) Here describe the lands by their present and ancient **Parcels.**
name, situation, tenancy, &c.—See No. XV. p. 128, n. (13).

(3) See general words applicable to different kinds of real **General words.**
property—No. XVI. p. 173, n. (14), and **INDEX VOC. GENERAL**
WORDS.

PURCHASES.

Estate Tail.

Reference to
the bargain and
sale for a year:

of other] rights, members, easements, appendants, and appurtenances whatsoever to the said hereditaments, and premises, or any part thereof belonging [or in anywise appertaining, or with the same or any of them, now or heretofore holden, used, occupied, or enjoyed]. (ALL which said messuages, lands, tenements, and hereditaments are now in the possession of, or legally vested in the said (*tenant to the præcipe*) by virtue of a bargain and sale for a year to him thereof made by the said (*vendor*) (1), (for five shillings consideration, by an indenture (2) bearing date on the day next before [and executed previously to the date of these presents for the term of one year, commencing from the day next preceding the day of the date of the same indenture], and by force of the statute made for transferring uses into possession), And the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises; and the rents, issues, profits, and proceeds thereof: AND all the estate, right, title, interest, use, trust, inheritance, term and terms for years, or for life or lives, property, possession, possibility, benefit and equity of redemption, claim and demand whatsoever, of him the said (*vendor*), in, to, out of, upon, or respecting the said hereditaments and premises, or any

Tenant for life.

(1) If the tenant for life join, add,
“ And the said (*tenant for life*).”

Lease for year.

(2) See the form of this bargain and sale *ante*, No. XIV.
p. 117.

part thereof. TOGETHER with all deeds, &c. muniments, evidences, and writings whatsoever, which in anywise relate to the same hereditaments and premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, and which now are, or hereafter shall or may be in the possession or lawful power of the said (*vendor*) or his heirs, or of any other person or persons from whom he or they can or may procure the same, without action or suit at law or in equity; and true and attested copies (duly stampd) of all deeds, muniments, and writings (1) (not being of record) so in his or their custody or power, as aforesaid, which relate to the same hereditaments and premises, or any of them, jointly with other hereditaments or property of equal or greater value, such copies, when first required to be made and delivered at the expense of the said (*vendor*) his heirs, executors, or administrators, but all future copies to be made and taken at the expense of the said (*purchaser*) his heirs or assigns. TO HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments, and premises hereinbefore, and in the said indenture of bargain and sale described, and hereby granted,

PURCHASES.

Estate Tail.

Deeds.

And copies.

To hold to the
tenant to the
præcipe.

(1) If part of the title deeds are retained and covenanted to be delivered as referred to a schedule annexed, say, Schedule.

“Of the several deeds, muniments, and writings set forth or mentioned in the schedule hereunder written or hereunto annexed, and of all other, &c.” *as in the text.*

PURCHASES.

Estate Tail.

and released, or otherwise assured or intended so to be, with their and every of their rights, members, appendants, and appurtenances, unto the said (*tenant to præcipe*) and his heirs, to and for the use and behoof of him the said (*tenant to præcipe*) (1)

Lands lying
in different
jurisdictions.

(1) If the lands lie within different jurisdictions, as part within the jurisdiction of a county palatine, and part within that of the courts at Westminster, &c. it will be convenient that the lands in each different jurisdiction should be conveyed to a distinct tenant to the præcipe; in which case, instead of conveying the estate to "the use of the tenant to the præcipe, and his heirs," it may be limited to (*a third person*) and his heirs,

"To the uses and for the intents and purposes hereinafter expressed (that is to say) as to and concerning all such of the said lands, &c. as are hereinbefore mentioned to be situated in the said county palatine of _____, to the use of the said (*a tenant to præcipe*) and his heirs," "and as to and concerning such of the said lands, &c. as are hereinbefore mentioned to be situated in the said county of _____, to the use of the said (*another tenant*) and his heirs, to the intent that each of them the said _____, and _____, may respectively become and be a perfect tenant and perfect tenants of the freehold of the lands, &c. so to him conveyed as aforesaid, and do and shall, as to the said lands, &c. so to him limited as aforesaid, permit and suffer the said (*purchaser*) to sue forth, and prosecute one or more, &c." *as in the text.*

Tenant for life.

And if tenant for life join in the assurance, say,

"Unto and to the use of the (*tenant to præcipe*) and his assigns, for and during the joint natural lives of the said (*tenant for life*), (*tenant in tail*), and (*tenant to præcipe*)."

The estate is limited during the joint lives of the tenant for life, tenant in tail, and tenant to the præcipe, lest by a conveyance to the tenant to the præcipe and his heirs the estate for life might merge in the fee, and if so the incumbrances affecting the reversion would attach upon it, and the new use limited to the

his heirs and assigns for ever. (1). To the in- PURCHASES.
tent that he and they may become and be a per-
Estate Tail.

tenant for life be subject to them, but by limiting it during their joint lives, the intervening estate prevents the merger, and yet a sufficient estate of freehold is conveyed to the tenant to the præcipe to support the recovery. And see *Edwards v. Slater*, Hard. 410, Co. Lit. 203, n. 94.

It is sometimes difficult to ascertain whether a devisee takes an estate tail or an estate for life only under the devise to him ; in which case, to prevent a forfeiture of the life estate, a previous estate may be conveyed, Where doubtful whether tail or life estate.

To a trustee and his heirs during the life of the tenant for life, to the use of the tenant for life and his assigns, during the joint lives of him and the trustee, with remainder to the use of the trustee and his heirs, during the life of tenant for life in trust for him and his assigns.

(1) If the reversion is in the tenant in tail himself, and it is intended to bar the entail by a fine, the remainder of the precedent as far as the covenants for the title must be omitted, and if a fine has not been previously levied, a covenant to levy it must be inserted, the form of such covenant may be as follows : Reversion in tenant in tail.

“ And for docking, barring, and destroying the said estate tail, and for conveying and assuring the said messuages, lands, tenements, and hereditaments, unto and to the use of the said (*purchaser*), and his heirs in fee simple ; the said (*vendor*) for himself, his heirs, executors, and administrators doth hereby covenant and declare, with and to the said (*purchaser*), his heirs, and assigns, in the manner following, (that is to say) that he the said (*vendor*) and his heirs shall and will at his and their own proper costs and expense as of term now last past, or of term now next ensuing, acknowledge and levy unto the said (*purchaser*) and his heirs, in due form of law, before the justices of his majesty's court of Common Pleas at Westminster, one or more fine or fines, *sur conusance de droit come ceo*, &c. with pro-

PURCHASES. fect tenant or tenants of the freehold of all and singular the same messuages, lands, ténements,

Estate Tail.

clamations to be thereupon made according to the form of the statute in such case provided, of all and singular the messuages, lands, tenements, and hereditaments hereinbefore granted and released, or intended so to be, by such names and descriptions respectively as shall be sufficient to comprise and pass the same, and as the counsel in the law of the said (*purchaser*) shall advise for that purpose. AND it is hereby agreed and declared between and by the said parties hereto, that the said fine, so as aforesaid or in any other manner to be levied of the said messuages, lands, tenements, and hereditaments shall be and enure unto the said (*purchaser*) and his heirs, to and for the use and behoof of him the said (*purchaser*), his heirs, and assigns for ever."

Fine must be with proclamations.

A fine levied for the purpose of barring estates tail must be with proclamations, according to the statute of 4 Hen. VII. c. 24, as it will otherwise work merely a discontinuance of the estate tail. See 3 Co. 86, *a*.

If it be thought expedient from an apprehension of the decease of the vendor before a recovery can be perfected, that a fine should be levied to the tenant to the præcipe, the preceding covenant should be inserted, and instead of declaring that the fine shall enure to the use of the purchaser, declare that it shall enure,

"Unto and to the use of the said (*tenant to præcipe*), his heirs, and assigns, to the end and intent that by virtue of these presents, and of the said fine *sur connissance de droit come ceo*, &c. so agreed to be acknowledged and levied by the said (*vendor*) unto the said (*tenant*) and his heirs, of the said messuages, &c. as of term now last past, as aforesaid, he the said (*tenant*) may become," &c. *as in the text*.

Purchase money retained.

If part of the purchase money be retained until the recovery be perfected, or for any other reason, see *ante*, No. XVI. p. 193, Rider (C).

hereditaments, and premises, with their and every of their rights, members, appendants, and appurtenances, in order (1) that one or more good and

PURCHASES.

Estate Tail.

If the original purchaser have parted with his interest in the premises before the conveyance was executed to him, add here a covenant by such original purchaser, that he has not incumbered; the form of such covenant will be found, *ante*, No. XVI. p. 177.

Sub-purchaser.

(1) The above form of the agreement for suffering a recovery is, for the reason given in a subsequent note, see *post*, p. 312, n. (3), the most approved and effectual, and should therefore be used in all purchases of considerable value; but where the purchase is very small, the following more concise form may be used in its stead:

“In order and to the end that one or more common recovery or recoveries, with double voucher, may forthwith, at the expense of the said (*vendor*) be had and suffered of the same premises by proper and sufficient names and descriptions, upon a writ or writs of entry *sur disseisin en le post*, in which the said (*purchaser*) shall demand against the said (*tenant to præcipe*) who shall vouch to warranty the said (*vendor*) who shall vouch the common vouchee in such manner as is usual in like cases, so that judgment may be given for the said (*purchaser*) to recover the said messuages, &c. hereby conveyed or intended so to be, against the said (*tenant to præcipe*) and for the said (*tenant*) to recover in value against the said (*vendor*), and for the said (*vendor*) to recover in value against the common vouchee, and that execution may be awarded, and seisin had, upon such recovery or recoveries, according to the usual course in like cases. And it is hereby directed, declared, and agreed, by and between the parties to these presents, as far as they respectively are interested, that after the recovery or recoveries hereby agreed to be suffered shall be suffered and perfected, the same, and all other recoveries suffered or to be suffered of the same messuages, &c. or any of them, either alone or together with other lands or hereditaments, shall as to and concerning the said messuages, &c. hereinbefore re-

Shorter form of setting out the recovery.

PURCHASES.*Estate Tail.*

Form of recovery.

perfect common recovery or common recoveries, with double voucher (1), may be had and suffered of the same lands and hereditaments. And for that purpose it is hereby declared (2) and agreed, by and between the said parties to these presents, that (3) the said (*tenant to the præcipe*) shall permit and suffer the said (*purchaser*) or some other person or persons, at the costs and charges in all things of the said (*vendor*) his heirs, executors, or admini-

leased, or otherwise conveyed or intended so to be, with the appurtenances, be and enure to the use of the said (*purchaser*) his heirs and assigns, for ever."

Voucher.

(1) A recovery suffered for the barring an entail should be at least with double voucher, as it will otherwise bar such estates only of which the tenant in tail was actually seised at the time of the recovery suffered, whilst if it be with double or more voucher, it will bar all other estates and interests which he may then have, or ever had in the same lands.

See principles of this distinction explained, 4 Elem. Conv. 2d edition, Bk. iii. par. 4. c. 2.

Uses may be declared previously to recovery.

(2) A declaration of the uses of a recovery previously to its being suffered, has been determined to be valid, see Countess of Rutland's case, 5 Co. 42, for although the declaration, being but directory, does not bind the estate or interest in the land, yet if the recovery be pursuant to the deed it cannot be averred that it was to other uses, and see Jones v. Morley, 1 Lord Raymond, 287, 2 Mod. 159, Downman's Ca. 9 Co. 7.

Form of recovery.

(3) It is usual to set out the form and manner in which the recovery is intended to be suffered, in order that the deed may be given in evidence, under the 14 Geo. II. c. 20. to substantiate the recovery, in case of its being neglected to be duly entered on record; but where, on account of the smallness of the purchase or other cause, it is considered to be an object to save the additional expense which setting forth the mode of suffering the recovery at so great a length may occasion, this form may be omitted, and a shorter one subjoined, see *ante*, p. 31, n. (1), be substituted in its room.

strators, at any time or times hereafter, to sue forth **PURCHASES.**
 and prosecute against him the said (*tenant to the*
præcipe) out of his Majesty's high court of Chancery, Estate Tail.
 one (1) or more writ or writs of entry, *sur disseisin*
en le post, returnable before his Majesty's jus-
 tices of the court of Common Pleas at West-
 minster (2), and thereby demand of the said

(1) If the lands lie in two or more counties, say,

Lands in two
counties.

“ Two (*or according to the number of counties*) or more writs of entry, *sur disseisin en le post*, &c. and by one of the said writs, demand of the said , the said lands and hereditaments, situated in the said county of , by the name and description of, &c. and by the other of the said writs, demand,” &c. *as in the text.*

(2) If the land lie in Wales, say,

Lands in Wales.

“ One or more writ or writs of *quod ei deforceat*, in the nature of a writ or writs of entry *sur disseisin en le post*, to be returnable before his Majesty's justice or justices of great sessions for the said county of .”

If in a county palatine, say,

County pala-
tine.

“ One or more writ or writs, &c. issuing out of his Majesty's high court of Chancery for the county palatine of , and returnable before his Majesty's justices of assize for the same county.”

If in the city of London, Norwich, or other place having ju-
 risdiction to suffer common recoveries, say,

London or Nor-
wich.

“ One or more writ or writs of *droit patent*, directed to the mayor and sheriffs of the city of London (*or other place*), in the court of hustings or other court holden concerning pleas of land, in the guildhall of the said city, according to the custom of the said city, and the course of common recoveries there, to be prosecuted against the said (*vendor*) and whereby the said (*purchaser*) shall, according to

PURCHASES. (*tenant to the præcipe*) the several messuages, lands, tenements, and hereditaments hereinbefore granted and released, or otherwise assured, or intended so to be, with their and every of their rights, members, appendants, and appurtenances, [by the name and description of two messuages, five acres of land, &c. *as in the writ of entry* or] by such [other] apt, good, sufficient, and proper names, number of messuages and acres, quantities, qualities, and other descriptions as shall be necessary or proper to comprise the same (1). AND the said (*tenant to the præcipe*) shall, in his own person, or by his attorney or attornies, lawfully authorised in that behalf, appear to the same writ or writs, and vouch to warranty the said (*vendor*) (2), and the said (*vendor*) (3) shall, in his own person, or by his attorney or attornies, lawfully authorised in that behalf, appear gratis, and freely enter into the warranty of the said (*tenant to the præcipe*) and

the custom of the said city, demand of the said (*vendor*) 'ALL,' &c.

Copyhold or
antient de-
mesne.

If the lands be copyhold or ancient demesne, say,

“ One or more writ or writs of *droit close* directed to the steward of the said manor (*or* hundred), and to be duly returned and make protestation to prosecute the same writ in the nature of a writ of entry *sur disseisin*, &c. and thereby demand,” &c. *as in the text*.

Wales.

(1) If lands lie in Wales, add,

“ And shall make protestation to pursue the said writ or writs, as and in the nature of a writ or writs *sur disseisin en le post*, according to the statute in that behalf provided.”

Wife.

(2) Or, “ And his wife.”

(3) Or, “ And his wife.”

take the same upon himself, and vouch over to warranty the common vouchee, for the time being, of the said court of Common Pleas (1), who shall appear gratis, and freely enter into the warranty of the said (*vendor*) (2), and after imparlance, make default, so that judgment may be given upon the said writ or writs for the said (*purchaser*) to recover all and singular the said messuages, lands, tenements, and hereditaments, [hereby granted and released, or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, appendants and appurtenances], against the said (*tenant to the præcipe*) and for the said (*tenant to the præcipe*) to recover in value against the said (*vendor*) (3) and for the said (*vendor*) (4) to recover in value against the said common vouchee, as is usual in like cases; and that execution may be sued out and prosecuted upon the said recovery or recoveries by the said (*purchaser*) and seisin had, taken, and delivered unto him and his heirs accordingly; and also that

PURCHASER.

Estate Tail.

(1) Or if in Wales or a county palatine,

Wales.

“ The said court of great session” or “ court of the said county.”

If copyhold or ancient demesne,

Copyholds.

“ The said court of the lord of the said manor, or the said court of ancient demesne.”

(2) Or, “ And his wife.”

Wife.

(3) Or, “ And the said his wife.”

(4) Or, “ And the said his wife.”

PURCHASES. every other act and thing needful or proper to be
 done, for the purpose of suffering and perfecting

Estate Tail.

 a common recovery or common recoveries with
 double voucher, in order to bar and destroy the
 estate tail of the said (*vendor*) (1) of and in the same
 [messuages, lands, tenements, and] hereditaments,
 and all remainders and reversions over and ex-
 pectant upon the said estate, and all conditions,
 and collateral and other limitations affecting
 the same, shall and may be forthwith made, done,
 and executed (2); [And the said parties to these

Dower.

(1) If the wife of the vendor be entitled to dower out of
 the land, and one of the purposes of the recovery is to bar such
 title, add,

“ And also to bar and extinguish all right and title to
 dower of the said his wife, of, in, or out of the same
 messuages,” &c.

Part copyholds.

(2) When part of the premises are copyhold, add here,

“ AND THIS INDENTURE further witnesseth, that in
 consideration of the premises, he the said (*vendor*) for him-
 self, his heirs, executors, and administrators, doth hereby cove-
 nant, promise, and agree to and with the said (*purchaser*)
 his heirs and assigns, that he the said (*vendor*) or his heirs
 shall and will at his or their own proper costs and charges,
 at the next general or other court that shall be holden for
 the manor of , in due form of law surrender into the
 hands of the lord or lady, lords or ladies for the time being of
 the said manor, according to the custom or customs thereof,
 all that the said copyhold or customary, &c.; and all the
 estate, right, title, and interest of him the said (*vendor*) in and
 to the same, to the use of the said (*tenant to præcipe*) or other
 person or persons, as or in the nature of a tenant or tenants
 to the præcipe, in order that one or more recovery or re-

presents do hereby, for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, (by way of direction and declaration, but not by way of covenant) consent, declare, and agree, according to their respective estates, rights, and interests, in the premises, that the recovery hereby agreed to be suffered, shall be suffered and perfected with all due and convenient expedition, and that they respectively and their respective heirs shall and will, from time to time, on their respective parts, use and employ every lawful means and endeavour to give effect to the same recovery or recoveries, and also to these presents.] AND it is hereby further directed, declared, and agreed, by and between all the said parties to these presents, so far as they respectively have any right, title, or interest in the premises, and can lawfully direct the uses of the

PURCHASES.

Estate Tail.

Declaration of
the uses of the
recovery to the
purchaser in
fee.

coveries may at the expense of the said (*vendor*) be had and perfected of the said copyhold hereditaments and premises, according to the custom of the said manor in which the said (*vendor*) shall be vouched, and vouch over the common vouchee, and that in, by, or immediately after the suffering such recovery or recoveries, the same copyhold premises may be surrendered or assured to the use of the said (*purchaser*), his heirs and assigns, and that he or they may immediately thereupon be admitted tenant or tenants thereof, to hold the same to the use of him the said (*purchaser*) his heirs and assigns for ever, according to the custom of the said manor, and be by him and them had and enjoyed accordingly.

PURCHASES. assurances hereinbefore mentioned, that immediately upon and after judgment shall have been obtained, and seisin had and taken upon such recovery or recoveries as aforesaid, the same recovery or recoveries, and also these presents, [and the bargain and sale for a year hereinbefore referred to as bearing date the day next before the day of the date hereof, and all and every other common recovery and common recoveries, and all and every fine and fines, acts, deeds,] and other assurances whatsoever, at any time heretofore, or to be at any time, and from time to time hereafter made, done, levied, suffered, or executed, of or concerning the said messuages, lands, tenements, and hereditaments, or any of them, or any part thereof, either alone or together with other messuages, lands, tenements, or hereditaments (1), by or between the parties to these presents, or any or either of them, or to which they or any or either of them are or is, or were or was, or shall or may be parties or privies, or party or privy, shall be and enure, and be adjudged, expounded, deemed, and taken to be and enure, and that the same respectively was and were meant and intended to be and enure as to and concerning the messuages, lands, tenements, and hereditaments

Moiety, &c.

(1) If the conveyance be of a moiety or other portion only of the estate, add,

“Of or concerning the said moiety, &c. or any other part or parts, or portion or portions of him the said (*vendor*) of, or in the same messuages,” &c.

and premises hereby granted and released, or otherwise assured or intended so to be with the appurtenances; and that the person or persons to whom the said assurances respectively, or any of them have or hath been, or shall or may be made or executed, of the same hereditaments, shall stand and be seised thereof, with their and every of their rights, members, and appurtenances, to the use and behoof of the said (*purchaser*) his heirs and assigns for ever" (1). AND the said

PURCHASES.

Estate Tail.

Covenant by vendor that he is seised in fee-tail.

(1) If the tenant for life join to make the tenant to the præcipe, say,

Tenant for life joining.

"To the use of the said tenant for life and his assigns for and during the term of his natural life by way of confirmation of the said estate and interest of him the said (*tenant for life*) in the said messuages, &c. with the appurtenances, &c. and also of all powers, privileges, and incidents appendant or annexed to the same estate and interest, and subject thereto, to the use," &c.

Or where the tenant for life joins, there may be added a proviso,

"That these presents are, nevertheless, upon this express condition, that if the said (*tenant in tail*) his executors or administrators, shall not, on or before the day of , well and truly pay, or cause to be paid unto the said tenant for life, or his assigns, the full sum of £100,000 of lawful money, &c. then the grant, release or assurance, hereby made to the said (*tenant to the præcipe*) during the natural lives of the said (*tenant to the præcipe*), and (*tenant for life*), shall cease and be void to all intents and purposes."

The use of which is to revive the estate of the tenant for life, on the sum not being paid on the day appointed (which of course it will not be), who being then in of his old estate, all powers annexed to it are revived with it; and see Hob. 262. 1 Salk. 568.

PURCHASES. (*vendor*) for himself, his heirs, executors, and administrators, doth hereby covenant and declare with and to the said (*purchaser*) his heirs and assigns in the manner following (that is to say), that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, or knowingly occasioned or suffered by him the said (*vendor*) or the said (*donor*) deceased (1), to the contrary, he the said (*vendor*) (2) at the time of the sealing and delivery of these presents is lawfully and rightfully seised in his own right, and to his own use, of all and singular the messuages, lands, tenements, hereditaments, and premises, hereinbefore

Dower.

If the estate be intended to be limited to uses to prevent dower, instead of the words within inverted commas, say,

“To the uses, upon the trusts, and for the ends, intents, and purposes hereinafter limited, expressed, or declared, of, or concerning the same, that is to say, To the use,” &c. See *post*, No. XXVIII.

Heir in tail.

(1) If the vendor be the heir or issue in tail of the original tenant in tail, add,

“Or any of the ancestors or predecessors in title of him the said (*vendor*);” and see *ante*, No. XV. p. 141. n. (39); No. XVI. p. 178. *et seq.* in notes.

Moiety, &c.

If the conveyance be of a moiety or other portion of the estate, see covenants in No. XXVI.

Brevity.

(2) If there be a wish to curtail the draft as much as possible, this covenant may be omitted; and that of the vendor having a right to convey, *post*, be commenced here; and see No. XV. p. 142. n. (41). and 4 Cro. Dig. 78. but quære the application of the case of a tenant in tail to the observation made in Cruise; a tenant in tail being equally in the seisin as tenant in fee-simple.

granted and released, or otherwise assured, or intended to be, as, of, in, and for a good, perfect, clear, absolute, and indefeasible estate of inheritance in fee-simple or fee-tail, in possession, and in severalty, without any manner of trust, condition, power of revocation, or of limiting or declaring any new or other use or uses, or any other qualification, restriction, matter, or thing whatsoever, expressed or implied, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever, (leases and agreements for leases of which the said (*purchaser*) hath had notice only excepted). AND also that (for and notwithstanding any such act, deed, matter, or thing as aforesaid) he the said (*vendor*) now hath in himself full power and lawful and absolute right and title to grant, bargain, sell, release, and assure, all and singular the same hereditaments and premises, and the fee-simple and inheritance thereof in possession, unto or to the use and behoof of the said (*purchaser*) his heirs and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents. AND further, that (1) the said (*purchaser*), his heirs and assigns, shall or lawfully may, immediately upon the sealing and delivery of these presents, enter into and upon, and at all times

PURCHASES.

Estate Tail.

And hath right to convey, &c.

That the purchaser shall quietly enjoy.

(1) If the conveyance be made to uses for preventing dower, the covenants for the title will be more correct if framed agreeably to those in No. XXVIII. Dower.

PURCHASES.Estate Tail.

Free from incumbrances.

thereafter have, hold, possess, and enjoy, all and singular the hereditaments and premises hereby granted and released or otherwise assured or intended so to be, with their and every of their respective rights, members, appendants, and appurtenances, and receive and retain the rents, issues, profits, and proceeds thereof, to and for his and their own use and benefit without any manner of hinderance, interruption, claim, or demand whatsoever, by or from the said (*vendor*) or his heirs, or any person or persons now or hereafter lawfully or equitably entitled to the said hereditaments and premises, or any part thereof, or any estate or interest therein, from, through, under, or in trust for him, them, or any of them, or the said (*donor*) deceased (1), (other than for or in respect of any such leases, or agreements for leases as aforesaid). AND that free and clear (2), and freely, clearly, and absolutely discharged and exonerated or otherwise by and at the expense of the said (*vendor*) his heirs, executors, or administrators, effectually protected and indemnified from and against all former and other [gifts, grants, bargains and sales, fines, common recoveries, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations,

Subsisting
leases.

(1) If there have been any leases granted of the premises which are still subsisting, see *ante*, No. XVI. p. 179. n. (21).

Heir in tail.

(2) If the conveyance be by the issue of tenant in tail, see *ante*, p. 321, n. (1).

entails, conditions, estate, right and title of or PURCHASES.
to dower, remainders, reversions in the crown Estate Tail.
or elsewhere, (and particularly of and from
and against the entail, remainders and reversion
hereinbefore particularly recited or mentioned)
judgments, decrees, recognizances, statutes, ex-
tents, executions, sequestrations, elegits, debts
of record, debts due to the king or any of his
predecessors, legacies, portions, annuities, rents
of all kinds, forfeitures, rights of entry, and cause
and causes thereof, fines, amerciaments, and all
and singular other] estates, rights, titles, interests,
charges, and incumbrances whatsoever, which at
any time or times heretofore have been, or at any
time hereafter shall or may be made, executed,
created, occasioned, or knowingly suffered by the
said (*vendor*) or the said (*donor*) deceased (1), or
any person or persons, now or hereafter right-
fully claiming, or having title to claim, any estate,
right, title, or interest, either at law or in equity,
from, through, under, or in trust for him, them,
or any of them, or by or through his, their, or any
or either of their acts, means, or defaults (2), the
leases or agreements aforesaid only excepted. AND
moreover that he the said (*vendor*) and his heirs, Covenant for
and all and every persons or person, now or at further assur-
any time hereafter rightfully claiming, or entitled
to claim, any estate or interest at law or in equity,
in or relating to the hereditaments and premises

(1) If the vendor be issue in tail, see *ante*, p. 321, n. (1).

Issue in tail.

(2) If there have been any leases granted of the premises which
are still subsisting, see *ante*, No. XVI. p. 180. n. (23).

Subsisting
leases.

PURCHASES. hereinbefore granted and released, or otherwise assured, or intended so to be, or any part thereof, from, through, under or in trust for him, them, or any or either of them, or the said (*donor*) deceased, or by or through his, their, or any of their acts, means, or defaults (1), (other than persons claiming, or entitled under or by virtue of such leases, or agreements for leases as aforesaid, so far as respects their respective estates or interests under or by virtue of the same), shall and will from time to time, and at all times hereafter, upon the request, and at the costs and expense of the said (*purchaser*) his heirs or assigns, make, do, acknowledge, levy, suffer, execute, and perfect, or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected, with all due expedition, all and every such further and other lawful and reasonable acts, deeds, conveyances, assurances, matters, and things whatsoever, [whether by fine or fines, with or without proclamations, common recovery or common recoveries, deed or deeds enrolled or otherwise, feoffment, release, confirmation, declaration, or limitation, of or to any use or uses, or other proper assurance or assurances, of record or not of record], for the further, better, and more effectually, fully, and absolutely or satisfactorily granting, releasing, conveying, and assuring the same messuages, lands, tenements, hereditaments, and pre-

Subsisting
leases.

(1) If there are any subsisting leases, see *ante*, No. XVI. p. 181. n. (25).

mises, and every or any part thereof, and the possession, reversion, and inheritance of the same, with their and every or any of their rights, members, appendants, and appurtenances, unto, and to and for the use (1) and behoof of the said (*purchaser*) his heirs and assigns, in such manner and form as he the said (*purchaser*) his heirs or assigns, or his or their counsel in the law, (being of the degree of a barrister) shall advise and require (2), [and prepare and tender (if the nature thereof permit) for his or their signature and execution, so that such further assurance or assurances, or any of them, do not contain nor imply any further or other warranty or covenant, than against or on the part of the person or persons, who shall be required to make or execute the same, his, her, or their devisors, ancestors, heirs, executors, and administrators, and his, her, or their own respective acts, deeds, omissions, or defaults; and so that the person or persons, who shall be required to make or execute any such assurance or assurances, be not obliged to go from his, her, or their then place or respective places of abode, for the making or

PURCHASES.

Estate Tail.

(1) If the estate be limited for preventing dower, say,

Dower.

“ To the uses, upon the trusts, and for the ends, intents, and purposes hereinbefore limited, expressed, or declared, of or concerning the same, that is to say,” &c. See *post*, No. XXVIII.

(2) If the title deeds be not delivered to the purchaser, add a covenant for their production, as in No. XVI. p. 196. rider (D), or prepare a separate deed for that purpose, agreeably to the form referred to, Wild. Sup. No. LXXII. p. 470.

Title deeds.

PURCHASES. executing the same, without a reasonable and sufficient sum being previously paid, tendered, or secured to him, her, or them, for or in respect of his, her, or their time, trouble, and expenses, which said acts, deeds, and assurances respectively, shall be and enure (unless thereby otherwise declared or mentioned) in confirmation of these presents, and of the estate and interest mentioned, or intended to be hereby granted, released, and assured], IN WITNESS, &c. (1).

Estate Tail.

Execution by attorney.

(1) If the deed be executed by attorney, see No. XVI. p. 184. n. (28). and as to attestation of witnesses, &c. see *ib.*

Execution by tenant to præcipe.

In order that the tenant to the præcipe may be precluded from dissenting to the conveyance made to him, and by that means frustrating the recovery, or from setting up any claim in himself to the estate under the conveyance, it is usual for him to execute the deed by which the freehold is conveyed to him, and the uses of the recovery declared; but as his appearance to the writ of entry estops him, and all claiming under him, from asserting that he took nothing by the conveyance; and the judgment on the recovery divests him of the estate which passed by it, there does not appear to be any use in this practice beyond the satisfaction which is afforded to a purchaser, by the knowledge of all usual forms, &c. having been pursued.

Attestation.

As to the mode of attestation, &c. see *ante*, p. 184, n. (27).

Receipt.

As to indorsement of receipts for consideration money, see *ante*, p. 185, n. (29).

Stamp.

. As to the stamp, see *ante*, end of Introduction.

Provision, &c.

For various other provisions, &c. to be inserted when circumstances require them, see riders at the end of No. XVI. *ante*, p. 188. *et seq.*

PURCHASES.

Estate for Life.

No. XXIII.

Conveyance by a Tenant for Life to a Purchaser.

Variations *where he is Tenant for his own Life, and where pur autre vie* (1).

Where he has a vested or contingent remainder in himself.

Where the Conveyance is by a Doweress of her Estate in Dower.

Where by a Tenant by the Curtesy.

THIS INDENTURE of two parts, made the
day of [in the year of the

(1) An estate for life being an estate of *freehold*, (whether it be for the life of the vendor himself, or of another person), must be conveyed by some assurance calculated to pass an estate of that description, as by livery of seisin, lease and release, bargain and sale enrolled, &c. That of which the form is here given is by *lease and release*, as being better known in practice than the other assurances.

Means of conveying an estate for life.

But as a tenant for life has frequently a power of leasing, &c. annexed to his estate, which will be extinguished by the alienation of his whole estate, see *Rex v. Bulkeley*, 1 Doug. 293, the conveyance of an estate for life is sometimes made by demising the estate to the purchaser for a long term of years, if the tenant for life shall so long live, inserting in the demise a covenant by the vendor to limit such estates, &c. under the power as the purchaser shall from time to time direct, with a declaration that the demise shall not operate as an extinguishment of, but be subservient to, the power. See the form of a demise of this kind, WILDE'S SUPPLEMENT, vol. 1. No. LXXXIV. p. 537; but as the privileges attendant upon the *freehold* will, by this means,

PURCHASES. reign, &c. and] in the year of our Lord

Estate for Life.

Parties.

*Recital of a will
under which the
vendor claims.*

BETWEEN (*the vendor*) (1), of, &c. of the
one part (2), and (*the purchaser*) of, &c.
of the other part. WHEREAS (3) A. B. late of,

remain in the vendor, this mode will not, in all cases, answer the views of a purchaser, whose object in making the purchase may be to qualify himself for some office, &c. requiring an estate of freehold.

*Power to ap-
point the re-
version.*

Sometimes under a will or settlement a person is tenant for life of an estate, with a power to appoint the reversion in fee in case of the failure of issue or other event. In this case, the mode of conveying the entire fee to a purchaser will be not first to convey the life estate, as that might destroy the power of appointing the reversion, but first to execute the power of appointing the reversion, and then to convey the estate for life by lease and release; and there appears to be no objection, as some have thought, to the release being included by a subsequent witnessing part in the appointment: for the law, as in the case of a lease and release by the same deed, (see *ante*, p. 166, notes), will construe the different parts of the instrument, so as to give effect to the intention and object of the parties. See the conveyance by appointment and release, Vol. II. No. XXXIV. to which the form will be similar. And if the tenant for life be a feme covert, the only difference will be the addition of a fine.

(1) If the conveyance be by a doweress, say,

“(The doweress), of, &c. widow and relict of A. B, late of deceased.”

Wife.

(2) Although the vendor be married, yet as a wife is not entitled to dower out of a mere freehold, or even out of a descendible freehold, but only of an estate in fee-simple or fee-tail, she need not be a party. See 3 Elem. Conv. 2d Edit. Vol. II. c. DOWER. But if it be her estate, she must be a party, for the purpose of declaring the uses of the fine.

(3) If the vendor took under a marriage settlement, see the form of the recital of such settlement, *ante*, p. 300.

*Tenant in
dower.*

If the conveyance be by a doweress of her life estate, say,

“WHEREAS the said A. B. died seized to him and his heirs of an estate of inheritance in possession and in severalty of

&c. deceased, by his last will and testament in writing, bearing date on or about the

PURCHASES.

Estate for Life.

and in certain messuages, lands, tenements, and hereditaments, situated at , in the county of , which, upon his decease, descended unto (*the heir*) of, &c. his heir at law, subject to the title to dower of the said (*doweress*) therein: AND WHEREAS by an indenture bearing date the day of and made, or expressed to be made, between the said (*heir*) of the one part, and the said (*doweress*) of the other part, the said (*heir*) assigned unto the said (*doweress*) for the term of her natural life, the several messuages, lands, tenements, and hereditaments therein and hereinafter more particularly described, as for and in full of her dower out of the lands and hereditaments of which the said A. B. died seised as aforesaid: AND WHEREAS," &c. *contract for purchase as above.*

If the conveyance be by a tenant by the curtesy of his life estate, say, Tenant by curtesy.

" WHEREAS A. B. the wife of the said (*vendor*) at the time of her marriage with the said (*vendor*) was seised to her and her heirs of an estate of inheritance in fee-simple, in possession and in severalty of and in certain messuages, lands, and tenements, situated at in the county of , and hereinafter more particularly described: AND WHEREAS issue of the said marriage having been born alive, the said (*vendor*) by the curtesy of England became and is now seised of the said messuages, lands, tenements, and hereditaments for the term of his natural life: AND WHEREAS," &c. *Contract for purchase as above.*

And see the forms of recitals of different kinds of deeds.
INDEX *voce* RECITALS.

If the vendor be tenant for life, with remainder to another for life, and the second tenant for life is the purchaser, the conveyance of the first tenant for life estate should be made to some person in trust for the second tenant, and not to the second tenant himself, because this would be a merger of the estate of the first Tenant for life purchaser.

PURCHASES. day of , which was in the year ,
 (signed, published, and attested as by law is re-
 quired for the passing of real estates of freehold),
 gave and devised the several messuages, lands,
 and hereditaments hereinafter described, unto
 the said (*vendor*) and his assigns, for the term
 of his natural life (or “the life of C. D.,” as the
case may be), with remainders over, as in the
 said will is expressed. AND WHEREAS the said
 (*testator*) departed this life on or about the
 day of , which was in the year ,
 without revoking or altering the said devise; and
 the said will was duly proved by the exècutors
 therein named, soon after his decease, in the pre-
 rogative court of . AND WHEREAS
 the said (*purchaser*) hath contracted with (1) the
 said (*vendor*) for the absolute purchase of the
 said messuages, lands, and hereditaments, for
 the life of him the said (*vendor*), at or for the

Estate for Life.

Death of de-
visor.

Agreement for
purchase.

tenant, which would therefore be lost on the death of the second tenant in the life-time of the first tenant; but by conveying to a trustee the merger is prevented, and consequently the second tenant may at his death, if the first tenant be living, dispose of the estate during the life-time of the first.

Sale by auction. (1) If the estate was sold by public auction, make the recital of the contract, and of the payment of the purchase money, conformably to No. XVI. p. 163. n. (4).

Sale by order of Court. If the sale were before a Master in Chancery, or the Deputy Remembrancer of the Court of Exchequer, see the variation subjoined to No. XVI. p. 188, Rider (A).

Sub-purchase. If an original purchaser has parted with his interest in the premises to a third person before a conveyance has been executed to him, see *ante*, No. XVI. p. 164, n. (5).

price or sum of £

(1). Now THIS PURCHASES.

INDENTURE WITNESSETH, that in pursuance and execution of the said contract, and in consideration of the sum of £

Estate for Life.

(2), of lawful money of the united kingdom of Great Britain and Ireland, of English value and currency, to the said (*vendor*) in hand well and truly paid by the said (*purchaser*), at or immediately before the sealing and delivery of these presents, the receipt whereof, [and that the same is in full for the absolute purchase of the freehold in possession, during the natural life of the said (*vendor* or other *cestui que vie*), of and in the messuages, lands, tenements, and hereditaments hereinafter described], the said (*vendor*) doth hereby expressly acknowledge [and of and from the same doth fully and absolutely acquit, release, discharge, and exonerate the said (*purchaser*), his heirs, executors, administrators, and assigns, and the said hereditaments, by these presents], He the said (*vendor*)(3) HATH granted, bargained, sold, aliened, and released, and by these presents DOTH grant,

The vendor in consideration of the purchase money.

Grants and releases the land, &c.

(1) If the consideration for the purchase be a grant of an annuity during the life of the vendor, see *ante*, No. XVI. p. 165, n. (6).

Consideration an annuity.

If it be the transfer of money in the funds, see *ibid*.

(2) If the consideration be paid otherwise than in money, or at any other time than at the execution of the conveyance, see the variations subjoined to No. XVI. p. 167, n. (8).

Money in the funds.
Consideration paid otherwise than in money.

(3) If the purchaser buys of a person who had previously bought but not taken a conveyance, see *ante*, No. XVI. p. 171, n. (10).

Sub-purchase.

PURCHASES. bargain, sell, alien, release, and confirm, unto the said (*purchaser*) and his heirs(1), ALL, &c.(2) or howsoever otherwise the said messuages, lands, tenements, and hereditaments, or any part thereof, now are, or is, or heretofore were or was situated, tenanted, called, known, or described, and also all other the messuages, lands, tenements, and hereditaments (if any), comprised in the indenture of bargain and sale for a year(3) hereinafter referred to : TOGETHER with all [outhouses (4), buildings, yards, cellars, vaults, areas, benefit and advantage of ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, watercourses, mines, quarries, rights and privileges of common of every kind, and all

Estate for Life.

General appurtenances.

(1) An estate for the life of the vendor will, when vested in the purchaser, be an estate *pur autre vie*, and may be limited either to his heirs and assigns, or his executors and administrators, at pleasure, see *post*, p. 334, n. (2).

Parcels.

(2) Here describe the subject of the conveyance by its ancient and present name, situation, tenancy, &c. See No. XV. p. 128, n. (13).

Moiety, &c.

If the conveyance be of a moiety or other portion only of the estate, see the mode of description and other variations, *post*, No. XXVI.

Remainderman
the purchaser.

(3) If the person entitled in remainder or reversion, expectant upon the determination of the life of the vendor, be the purchaser, a bargain and sale for a year will not be necessary, see *ante*, No. XIII. p. 110. n. (1).

General words.

(4) See general words applicable to different kinds of real property, Precedent No. XVI. p. 173, n. (14), and INDEX, *voce* GENERAL WORDS.

and all manner of other] rights, privileges, easements, appendencies, and appurtenances whatsoever, to the said messuages, lands, tenements, and hereditaments, or any part thereof respectively belonging, [or in anywise appertaining, or reputed or deemed so to be, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed]: (ALL which said messuages (1), lands, tenements, and hereditaments, are now in the possession of, or legally vested in, the said (*purchaser*), by virtue of a bargain and sale to him thereof made by the said (*vendor*), for five shillings consideration, by an indenture (2) bearing date on the day next before the date of these presents, for the term of one year, if the said (*vendor* or other *cestui que vie*) so long live [commencing from the day next preceding the day of the date of the same indenture], and by force of the statute made for transferring uses into possession), and the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises, and the rents, issues, profits, and proceeds thereof: AND all the estate,

PURCHASES.

Estate for Life.

Reference to the bargain and sale for a year.

(1) If the conveyance be of a moiety or other portion of an estate, see *post*, No. XXVI. Moiety, &c.

(2) See the form of this bargain and sale, Precedent No. XIII. Lease for a year.
p. 117.

But where the purchaser has a vested interest in remainder or reversion, the bargain and sale will be unnecessary, see *ante*, Remainderman the purchaser.
p. 110, n. (1).

PURCHASES. right, title, interest, property, claim, and demand
Estate for Life. whatsoever, both at law and in equity, of him the
 said (*vendor*), in, to, or respecting the same here-
 ditaments and premises, or any part thereof.
 (*Add grant of title deeds (1) and attested copies,*
as in No. XVI. p. 175). To HAVE AND TO HOLD
 the said messuages, lands, tenements, heredita-
 ments, and premises, hereinbefore, and in the
 said indenture of bargain and sale described, and
 hereby granted and released, or otherwise assured
 or intended so to be, with their and every of their
 rights, members, privileges, appendants, and ap-
 purtenances, unto the said (*purchaser*) and his
 heirs, to and for the use and behoof of him the
 said (*purchaser*), his heirs and assigns (2), for and

Grant of title
 deeds.
 To hold to the
 purchaser for
 the life of the
 vendor, &c.

Title deeds.

(1) The tenant of the freehold being by the ancient law to answer the præcipe of strangers, a purchaser of the estate of a tenant for life has a right to expect a delivery of the title deeds, in order to enable him to defend the title; and see *ante*, No. XV. p. 134, n. (26).

"Heirs and
 assigns."

(2) An estate holden *par autre vie* may, should it be desired, be limited to the "executors, administrators, and assigns," instead of the "heirs and assigns," of the purchaser; *Kendale v. Mirkfield*, Bar. Ch. Rep. 46. *French v. Tucker*, 2 Vern. 184. *Baker v. Bailey*, 2 *ib.* 225, and see 2 Elem. Conv. 2d Ed. Vol. II. but, whether the estate be for the life of the owner himself or of another (it being in either case an estate of *freehold*), it must be limited to commence in interest immediately upon the delivery of the deed, and not on any future day.

Remainderman
 the purchaser.

If the conveyance be to a remainderman for life, the limitation should be to a trustee for such remainderman, and not to the remainderman himself; for if the limitation be immediately to the remainderman, the vendor's life estate will

during the term of the natural life of the said (*vendor* or other *cestui que vie*), “but not longer or otherwise(1).” AND the said (*vendor*), for himself, his heirs, executors, and administrators, DO TH hereby covenant and declare, with and to the said (*purchaser*), his heirs and assigns, in the manner following (that is to say), that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, or knowingly occasioned or suffered, by him the said (*vendor*), or the said (*testator*) deceased, to the contrary, he the said (*vendor*), at the time of the sealing and delivery of these presents, is lawfully and rightfully seised in his own right, and to his own use, of all and singular the messuages, lands, tenements, hereditaments, and premises hereinbefore granted and released, or otherwise assured or intended so to be as aforesaid, as of and for a good, perfect, clear, absolute, and indefeasible estate of freehold, in possession and in severalty, for and during the term of his natural life (or the

PURCHASES.

Estate for Life.

Covenant by
vendor that he
is seised of an
estate of free-
hold.

merge in his, and in case of his death before the vendor, the estate will cease; but by conveying it to a trustee, B. may dispose of it for A.'s life, vid. Brad. Point. Bk. 59.

(1) If the intention be that the vendor should part with all contingent and other interests he may have in the estate, say, instead of the words within inverted commas,

Contingent in-
terests.

“And for all such further and other estate and interest, if any, which he the said (*vendor*) now hath, or at any time hereafter shall or may have or become entitled to in possession, reversion, remainder, expectancy, or otherwise howsoever.”

PURCHASES.Estate for Life.And hath right
to convey.That the pur-
chaser shall
quietly enjoy.

natural life of *the cestui que vie*) without any manner of trust, condition, power of revocation, or of limiting or declaring any new or other use or uses, or any other qualification, restriction, matter, or thing whatsoever, expressed or implied, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same estate or premises in any manner howsoever (leases and agreements for leases of which the said (*pur-chaser*) hath had notice only excepted). AND also that (for and notwithstanding any such act, deed, matter, or thing, as aforesaid), he the said (*vendor*) now hath in himself full power, and lawful and absolute right and title to grant, bargain, sell, release, and assure all and singular the said hereditaments and premises, and the freehold and possession thereof, unto and to the use and behoof of the said (*purchaser*), his heirs and assigns, for and during the natural life of him the said (*vendor*) (or other *cestui que vie*) in the manner aforesaid, and according to the true intent and meaning of these presents. AND further, that he the said (*purchaser*), his heirs and assigns, shall or lawfully may immediately upon the sealing and delivery of these presents, enter into and upon, and at all times thereafter, during the natural life of the said (*vendor*, or other *cestui que vie*), have, hold, possess, and enjoy all and singular the same hereditaments and premises, with their and every of their respective rights, members, appendants, and appurtenances, and receive and retain the rents, issues, profits, and proceeds thereof, to and

for his and their own use and benefit, without any manner of hinderance, interruption, claim, or demand whatsoever, by or from the said (*vendor*) or any person or persons, now or hereafter lawfully or equitably entitled to the said hereditaments and premises, or any part thereof, or any estate or interest therein, from, through, under, or in trust for him, or the said (*testator*) deceased (1), [other than persons claiming through, under, or by virtue of any such leases or agreements as aforesaid, so far as respects their estates and interests, under or by virtue of the same.] AND that free and clear, and clearly and absolutely discharged and exonerated or otherwise, or by and at the expense of the said (*vendor*), his heirs, executors, or administrators, effectually protected, and indemnified from and against all former and other [feoffments, gifts, grants, bargains and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, right and title to dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king, or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amer-
ciaments, and all] estates, rights, titles, interests, charges, liens, and incumbrances whatsoever,

PURCHASES.

Estate for Life.

Free from Incumbrances,

(1) If the premises are subject to subsisting leases, see *ante*, No. XVI. p. 179, n. (21). Subsisting leases.

PURCHASES.

Estate for Life.

Covenant for
further as-
surance.

which at any time heretofore have been, or which at any time hereafter during the natural life of the said (*vendor* or other *cestui que vie*) shall or may be made, executed, created, occasioned, or knowingly suffered by the said (*vendor*), or the said (*testator*) deceased (1), or by their or either of their acts, means, or default, or by any person or persons now or hereafter rightfully claiming, or having title to claim any estate, right, title, or interest, either at law or in equity, from, through, under, or in trust for them or either of them, such leases and agreements for leases as aforesaid only excepted. AND moreover, that he the said (*vendor*) and all and every person or persons, now or at any time hereafter, during the natural life of the said (*vendor* or other *cestui que vie*), rightfully claiming, or entitled to claim any estate, or interest, at law or in equity, in or relating to the hereditaments and premises hereinbefore granted and released, or otherwise assured or intended so to be, or any part thereof, from, through, under, or in trust for him or the said (*testator*) deceased [other than persons claiming or entitled under or by virtue of such leases or agreements for leases as aforesaid, so far as respects their respective estates or interests under or by virtue of the same] shall and will from time to time, and at all times hereafter during the natural life of the said (*vendor* or other *cestui que vie*) upon every reasonable request, and at the costs and expense of the said (*purchaser*), his heirs or

Subsisting
leases.

(1) If there are any subsisting leases, see *ante*, No. XVI. p. 180, n. (23).

assigns, make, do, acknowledge, levy, suffer, execute, and perfect [or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected], with all proper despatch, all and every such further and other lawful and reasonable acts, deeds, conveyances, assurances, matters, and things whatsoever, [whether by fine or fines (with or without proclamations,) common recovery or common recoveries, deed or deeds enrolled or otherwise, feoffment, release, confirmation, limitation, or declaration of or to any use or uses, or other assurance or assurances of record, or not of record], for the further, better, and more effectually or satisfactorily conveying and assuring the same hereditaments and premises, with their and every of their respective rights, members, appendants, and appurtenances, unto, and to and for the use, behoof, and benefit of the said (*purchaser*), his heirs and assigns, for and during the term of the natural life of the said (*vendor* or other *cestui que vie*), in such manner and form as he the said (*purchaser*), his heirs or assigns, or his or their counsel in the law (being of the degree of a barrister), shall advise and require [and prepare and tender (if the nature thereof permit), for his or their signature and execution; so that such further assurance or assurances, or any of them, do not contain nor imply any further or other warranty or covenant, than against or on the part of the person or persons who shall be required to make or execute the same, and his, her, or their own

PURCHASES.

Estate for Life.

PURCHASES. respective ancestors, executors, or administrators, or their respective acts, deeds, omissions, or defaults; and so that the person or persons who shall be required to make any such assurance or assurances, be not obliged to go from his, her, or their then place or respective places of abode, for the making or executing the same, without a reasonable and sufficient sum being previously paid, tendered, or secured to him, her, or them, for or in respect of his, her, or their time, trouble, and expense (1)]. IN WITNESS, &c.

Title deeds.

(1) If the title deeds be not delivered to the purchaser, add a covenant for their production, as in No. XVI. p. 196, with the addition of,

Vendor not to produce title deeds except in court.

“PROVIDED ALWAYS, nevertheless, and it is hereby declared and agreed, that the said (*vendor*) shall not be obliged to part with or produce the said deeds, writings, and evidences, or any of them, save only in some open court of law, equity, or other judicature or otherwise, in the presence of his own counsel or solicitor, and further that upon every such delivery,” &c.

Or prepare a separate deed for that purpose, agreeably to the form referred to, *ante*, p. 183.

Covenant by tenant for life for his son, the reversioner, to convey when of age.

If the vendor be tenant for life with reversion to his son-in-law (which under wills and marriage settlements is a very usual circumstance), and the vendor has agreed that the reversioner shall join when of age, add,

“And lastly, that he the said (*vendor*) shall and will, within the space of six months next after the said (*reversioner*) shall have attained his age of twenty-one years, or shall have departed this life under that age, cause and procure the said (*reversioner*), if living, and if not, the heirs of him the said (*reversioner*), by good and sufficient conveyances and assurances in the law, to grant, convey, and as-

sure, either alone or together with any other person who **PURCHASER.**
may be a necessary party to such conveyance or assurance, Estate for Life.
all those the said messuages, lands, tenements, heredita-
ments, and premises, hereinbefore granted and released, or
otherwise assured or intended so to be, and to which the
said (*reversioner*) is entitled in fee simple in reversion ex-
pectant upon the determination of the estate for life of the
said (*vendor*) as aforesaid, unto and to the use of the said
(*purchaser*), his heirs and assigns for ever, free from all
incumbrances whatsoever, by him or them committed or oc-
casioned, in such manner, and with such usual and reasonable
covenants, as he the said (*purchaser*), his heirs or assigns,
or his or their counsel in the law (being of the degree of a
barrister), shall reasonably require or advise."

See various provisoes, &c. to be inserted if required by cir- **Provisoes, &c.**
cumstances, *ante*, No. XVI. p. 188, *et seq.*

* * * As to execution, attestation, &c. &c. see No. XVI. n. **Execution, &c.**
(28), &c.

PURCHASES.

Reversion, &c.

No. XXIV.

***Conveyance of a Reversion or Remainder in Lands,
&c. to a Purchaser, by Lease and Release.***

Variation *where the Conveyance is by Grant, or Bargain and Sale to be enrolled, or both.*

Also where the Tenant for Life, &c. is the Purchaser.

Where it is the Estate of the Wife, &c. &c. (1).

THIS INDENTURE of parts, made the day of in the first year, &c. and in the year of our Lord , BETWEEN the (*ven-*
dor) (2) of, &c. of the one part, and the (*pur-*

(1) See also the variations to No. XVI. (*ante*, p. 160.)

Wife.

(2) Although the vendor be married, yet as estates in remainder or reversion are not subject to dower, the wife need not be a party unless it be her estate; but, if it be the wife's estate, she must necessarily be a party, and convey as in other cases where she has a present interest in the land.

Observations on the mode of conveying a remainder.

An estate in remainder, if *vested*, may be conveyed by any mode of assurance which does not necessarily operate immediately upon the possession, as by grant, bargain, and sale, Fox's *ca.* 8 Co. 93, lease and release, but not by feoffment or fine, *come ceo*; *sed* *vid.* 2 Prest. Conv. 235, 244. 2 Ca. Op. 144. Co. Lit. 270, a. n. (3). (Fearn. Posth. Wks. 6. *contr.*) and so of an estate in reversion; but if the remainder be *contingent*, it cannot in strictness of *law* be transferred to another by any form of *conveyance*, and can be legally assured to the purchaser only by matter of record, as by fine or equitable recovery, operating as

chaser) (1) of, &c.

of the other part. PURCHASES.

Reversion, &c.

(1) If the conveyance be to uses for preventing a title to dower in the vendor's wife, or the determination of the particular estate during the coverture, make a trustee party for that purpose of the third part, and see *post*, No. XXVIII.

Dower.

an estoppel, see *Weale v. Lower*, Pollexf. 54; *Vick v. Edwards*, 3 P. Wms. 372. An assignment of it for a valuable consideration will, however, if it be descendible to the heirs of the assignee, be supported in *equity*—*Wright v. Wright*, 1 Ves. sen. 409. But the most appropriate and technical mode of conveying a reversion or vested remainder (as not lying in livery) is by GRANT, *vid.* Co. 49. a.; but as this species of assurance is solely calculated to pass the remainder or reversion exclusively of the possession, and as it may have happened, that, by forfeiture or other means, the estate for life, or other particular estate upon which the remainder or reversion is expectant, may have determined, and the estate have in fact become an estate in possession, it is usual to transfer these estates by lease and release, bargain and sale enrolled, or other assurance capable, under the statute of uses, to pass the possession of the grantor, without divesting the estate of the particular tenant. “And in a variety of other instances which occur in every day's experience, the lease and release are used when a mere grant would be sufficient. But as the validity of the grant would depend upon evidence that the grantor had merely a reversion or remainder, and consequently it would be incumbent on the person claiming under this assurance to show that there was a previous existing particular estate, the lease for a year is generally taken by way of caution, that the grantor may have in his own hands evidence of the existence of a particular estate capable of enlargement.” 2 Prest. Conv. 235.

The form here given is, therefore, by *lease* and *release*; but variations are subjoined, enabling the pupil to convert it into either of the other species of deeds just mentioned, at pleasure. Where, however, the tenant for life, or person entitled to the immediate freehold, is the purchaser, a lease for a year is wholly unnecessary.

Tenant for life
the purchaser.

But by whichever of these assurances the conveyance be

PURCHASES. WHEREAS, &c. (1) AND WHEREAS the said (*tenant for life*) is still living. AND WHEREAS the said (*purchaser*) hath contracted with (2) the said (*vendor*) for the absolute purchase of the remainder or reversion in fee-simple of the said messuages, lands, and hereditaments expectant upon the decease or other sooner determination of the estate for life of the said (*tenant for life*) at the sum of £ (3); and has requested that the same may be conveyed to him in the manner hereinafter expressed. Now THIS INDENTURE WITNESSETH (4), that in pursuance and execution of

Reversion, &c.

Contract for purchase.

WITNESS,
The vendor in consideration of the purchase money.

Conveyance of a remainder should be enrolled.

effected, it will be proper that it should either be enrolled in one of the courts at Westminster, or be accompanied by a bargain and sale (for which see *ante*, p. 204,) in order that the evidence of the purchaser's title may be preserved in case of the loss or destruction of his conveyance; for, not having a right either to the title deeds of the estate or to attested copies of them (unless by the consent of the tenant of the particular estate), he will otherwise, in that event, possess no evidence to support his title against the remainderman or reversioner on the estate's falling into possession, and see *ante*, p. 171, n. (9), and 8 Bridgm. Convey. 398.

Auction.

Consideration.

Construction, &c.

(1) Recite the deed or will under which the vendor became entitled. For the form of such recital, see INDEX, *voce* RECITAL.

(2) If the estate was sold by public auction, or otherwise than by private contract, see *ante*, No. XVI. p. 163, n. (4), *et seq.*

(3) It has been before observed, that the consideration for the purchase of a reversionary interest, and more particularly if it be made by the apparent or presumptive heir at law, should bear some reasonable proportion to the actual value of it, see *ante*, No. VII. p. 73, n. (4).

(4) For the reason and effect of the different parts of the deed upon which no observation is hereafter made, see the notes subjoined to No. XV. (*ante*, p. 122, *et seq.*)

the said contract, and in consideration of the sum **PURCHASES.**
of £ of lawful money of the United King-
dom of Great Britain and Ireland, of English Reversion, &c.
value and currency, to the said (*vendor*) in hand
well and truly paid (1) by the said (*purchaser*) at
or immediately before the sealing and delivery of
these presents, the receipt whereof [and that the
same is in full for the absolute purchase of the
inheritance in fee-simple in remainder or rever-
sion, expectant as aforesaid, of and in the mes-
suages, lands, tenements, and hereditaments here-
inafter described], the said (*vendor*) DOTH hereby
acknowledge [and of and from the same doth
fully and absolutely acquit, release, discharge,
and exonerate the said (*purchaser*), his heirs, ex-
ecutors, and administrators, and the said mes-
suages, lands, tenements, and hereditaments, by
these presents (2)], He the said (*vendor*) HATH **Grants and re-**
granted, bargained, sold, aliened, and released, **leases the land,**
&c.

(1) If the consideration be of any other kind than money **Consideration**
paid down at the time of the execution of the conveyance, see **not money paid.**
variations subjoined or referred to in No. XVI. *ante*, p. 165,
167, 185.

(2) If a bargain and sale be intended to be executed for the **Bargain and**
purpose of being enrolled, and see *ante*, p. 171, n. (9), and 204, **sale enrolled.**
add,

“ AND which said sum of £ is the same sum of
£ as is mentioned to be the consideration money in an
indenture of bargain and sale, bearing or intending to bear
even date herewith, and made or intended to be made, by
the same persons as are parties hereto for the purpose of
being inrolled in one of his Majesty's courts at Westminster.”

PURCHASES.

Reversion, &c.

and by these presents DOTH grant (1), bargain, sell, alien, release, and confirm unto the said (*purchaser*) and his heirs, ALL (2), that the remainder or reversion, expectant upon and to take effect in possession immediately from and after the decease, or other sooner determination of the estate for life of the said (*tenant for life*) (and whether such determination have already happened or not) of and in ALL, &c. (3) (or howsoever otherwise the said messuages, lands, tenements, and hereditaments, or any of them, now are, or is, or heretofore were or was situated, tenanted, called, known, described, or distinguished; “and also of and in all other the messuages, lands, tenements, and hereditaments (if any) which are described in the certain indenture

Grant.

(1) It has been observed in a preceding note, that a remainder or reversion may be conveyed by any mode of assurance not exclusively calculated to transfer the immediate *possession* of the land, see *ante*, p. 342, n. (2); but that the most appropriate and technical mode is *grant*, which word alone will be sufficient to pass the estate, but the addition of those which here accompany it is proper, for the reason already assigned, see *ante*, p. 343, note. The late Mr. Fearne indeed thought that a mere grant was not sufficient to pass a remainder or reversion, but that it must be either by lease or release, or bargain and sale enrolled, see Read. Stat. Inrol. Posth. Wks. p. 29, but this is allowed to have been an error, see 2 Prest. Conv. 236, and *ante*, p. 342, n. (1).

Moiety, &c.

(2) If the conveyance be of a moiety, or other undivided part, see No. XXV.

Parcels.

(3) Here describe the subject of the conveyance by its ancient and present name, situation, tenancy, &c., see descriptions applicable to different species of property, INDEX, *voce* PARCELS, and see No. XV. p. 128, n. (13), and No. XVI. p. 172, n. (11), and No. XXVII.

of bargain and sale (1) for a year, hereinafter more particularly referred to." AND also of and in all [houses (2), outhouses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, benefit and advantage of ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, under-woods, and the ground and soil thereof, mines, quarries, rights, and privileges of common, of every kind, and all] and all manner of [other] rights, members, easements, appendants, and appurtenances whatsoever to the said hereditaments and premises, or any part thereof, belonging [or in anywise appertaining, or reputed or deemed so to be, or with the same or any of them, now or heretofore holden, used, occupied, or enjoyed], (ALL which said messuages, lands, tenements, and hereditaments, are now legally vested in the said (*purchaser*), by virtue of a bargain and sale (3) to him thereof made by the said (*vendor*)

PURCHASES.

Reversion, &c.

General appurtenances.

Reference to the bargain and sale for a year.

(1) If the conveyance be solely by *grant* or *bargain and sale enrolled*, omit the lines within inverted commas referring to a bargain and sale for a year.

Conveyance by grant, &c.

And if the tenant for life, or person entitled to the immediate freehold, be the purchaser, no bargain and sale for a year will be necessary, and of course this and every subsequent reference to that instrument must also be omitted.

Tenant for life the purchaser.

(2) See general words applicable to different kinds of real property—Precedent No. XV. p. 173, n. (13), and INDEX, *voce* GENERAL WORDS.

General words.

(3) See the form of such bargain and sale, *ante*, p. 110. 117.

If the conveyance be made by grant, or by bargain and sale to be enrolled, or if the tenant for life be the purchaser, see pp. 343. 345, 346, notes.

Conveyance by grant, &c.

PURCHASES. (for five shillings consideration) by indenture bearing date on the day next before the day of the date of these presents, for the term of one year, commencing from the day next preceding the date thereof; and by force of the statute made for transferring uses into possession;) and of and in the rents, issues, profits, and proceeds, to arise or become payable for or in respect of the same hereditaments and premises, or of any part thereof expectant as aforesaid. AND all the present and future estate, right, title, interest, use, trust, property, possibility, claim, and demand whatsoever, both at law and in equity, of him the said (*vendor*) in, to, out of, upon, or respecting the said hereditaments and premises. [TOGETHER with all deeds, muniments, writings, and evidences of title whatsoever, (to be delivered from and immediately after the decease or other determination of the estate for life of the (*tenant for life*) in anywise relating to the same hereditaments and premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, and which now are, or upon the decease or other sooner determination of the estate for life of the said (*tenant for life*) or at any time thereafter, shall or may come to or be in the possession or lawful power (1) of the said (*vendor*) his heirs or assigns, or any other person or persons from whom he or

Reversion, &c.

Grant of title deeds.

Title deeds.

(1) The grant being of a remainder or reversion, care should be taken to confine the grant of title deeds to such as are in the lawful power of the vendor.

they can or may procure the same, without action or suit at law, or in equity, with full power and authority to demand and recover the same, and true and attested copies (duly stampd), of the several deeds, muniments, and writings (not being of record), which now are or hereafter shall be so in his or their custody or power as aforesaid, in anywise relating to the same hereditaments and premises, or any part thereof, jointly with other hereditaments or property of equal or greater value, such copies when first required to be made and delivered at the expense of the said (*vendor*) his heirs, executors, or administrators, but all future copies to be made and taken at the expense of the person or persons requiring the same.

TO HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments, and all and singular other the premises hereinbefore “and in the said indenture of bargain and sale described” (1), and hereby granted, and released, or otherwise assured or intended so to be, with all and every the rights, members, privileges, appendants, and appurtenances to the same or any part thereof belonging, “unto the said (*purchaser*) and his heirs, to take effect in possession immediately upon or after the decease or other sooner determination of the estate for life of the said (*tenant for life*) as aforesaid, to and for the use and behoof of him the said (*purchaser*) his heirs and assigns for

PURCHASES.

Reversion, &c.

And copies.

To HOLD to the purchaser in fee-simple.

(1) If the conveyance be made by grant alone, or bargain and sale enrolled, omit the words within inverted commas.

Conveyance by grant.

PURCHASES. ever." (1) AND the said (*vendor*) for himself, his heirs, executors, and administrators, DOTH hereby covenant, declare, and agree, with and to the said (*purchaser*) his heirs and assigns, in the manner following (2) (that is to say) that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, or knowingly occasioned, suffered, or omitted by him the said (*vendor*) (3), to the con-

Reversion, &c.

Covenant by the vendor that he is seised, &c.

Estate must commence in *presenti*.

(1) A remainder or reversion of a freehold being an immediate and present interest, although not to take effect in possession until a future time, must be limited to commence in *presenti* and not in *futuro*.

Dower.

If the conveyance be intended to be made to uses to prevent dower, insert the limitation given *post*, No. XXVIII.

Copyhold.

If any part of the lands be copyhold, a covenant to surrender them may be properly introduced here. See the form of such covenant, *ante*, No. XVIII. p. 236, or declare the uses of a surrender previously made, as *ante*, p. 233, n. (3).

Dower.

(2) If the conveyance be to uses for preventing dower, the form of the covenants for the title should be varied agreeably to those of No. XXVIII.

Wife's estate.

If the estate be the wife's, add here a covenant to levy a fine or declaration of the uses of a fine already acknowledged, see *post*, No. XXXI. The proper species of fine for passing a remainder or reversion will be that *sur cognizance de droit tantum* or *sur concesset*, as these fines do not, like the fine *come ceo*, acknowledge a previous gift, with delivery of possession, which would be inconsistent with the nature of a reversionary estate, as in this case the possession during the particular estate must necessarily be in a third person, and *vid. Moor, Rep. 629*.

Vendor taking by devise or descent.

(3) If the vendor is entitled to the premises by will or voluntary conveyance, add, "or the said (*devisor or last owner*) deceased;" if by descent say, "or any of his ancestors."

trary, he the said (*vendor*) (1), at the time of the sealing and delivery of these presents, is lawfully, rightly, and absolutely seised (2), possessed of, or entitled to as of fee, in his own right, of and in all and singular the messuages, lands, tenements, hereditaments, and premises hereinbefore described, and hereby granted and released, or otherwise assured, or intended so to be, as, of, in, and for a good, perfect, clear, absolute, and indefeasible estate of inheritance in fee-simple, in remainder or reversion, expectant upon, and to take effect in possession, from and immediately after the decease or other sooner determination of the estate for life of the said (*tenant for life*) as aforesaid, without the said estate or premises being subject or liable to any manner of trust, condition, power of revocation, or of limiting or declaring any new or other use or uses, or other qualification, restriction, matter, or thing whatsoever, expressed or implied, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever. AND also that for and not-

PURCHASES.

Reversion, &c.

And hath right to convey, &c.

(1) And if the conveyance be by grant, or by bargain and sale enrolled, omit the words within brackets.

Conveyance by grant, &c.

(2) There is a *legal*, although not an *actual*, seisin of estates in *remainder* or *reversion*, as well as of those in *possession*, but this seisin is "*as of fee*," and not as of the grantor's "*demesne as of fee*."

If part of the land be copyhold, make such additions to this and the subsequent covenants as will be found in those of No. XVIII. *ante*, p. 269.

Copyholds.

PURCHASES. withstanding any such act, deed, matter, or thing as aforesaid, he the said (*vendor*) now hath in himself full power, and lawful and absolute right and title to grant, bargain, sell, release, and assure, all and singular the same hereditaments, estates, and premises, unto and to the use and behoof of the said (*purchaser*) his heirs and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents. And further, that he the said (*purchaser*), his heirs and assigns, shall or lawfully may, immediately upon the decease or other sooner determination of the estate for life of the said (*tenant for life*), and at all times thereafter, enter into and upon, and hold, possess, and enjoy all and singular the said hereditaments and premises, with their respective rights, members, and appurtenances, and receive and retain the rents, issues, profits, and proceeds thereof, to and for his and their own use and benefit, without any manner of hinderance, interruption, disturbance, claim, or demand whatsoever, by or from the said (*vendor*) or his heirs, or any person or persons now or hereafter entitled to any estate, right, or interest at law or in equity, in or to the same, or any part thereof, from, through, under, or in trust for him or them (1). AND that free and clear, and clearly and absolutely discharged and exonerated, or otherwise by and at the expense of the said (*vendor*) his

Reversion, &c.

That the purchaser shall quietly enjoy.

Free from incumbrances.

(1) See *ante*, p. 350, n. (3).

heirs, executors, or administrators, defended, protected, and indemnified from, and against all former and other [gifts, grants, bargains and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate, right and title of or to dower, remainders or reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore or hereafter have been, or shall or may be made, created, executed, committed, or knowingly occasioned, or suffered by the said (*vendor*) or his heirs (1), or any other person or persons, now or hereafter lawfully and rightfully claiming or possessing any estate, right, title, or interest, either at law or in equity, from, through, under, or in trust for him or them, or by or through his or their acts, means, defaults, consent, or privity. AND moreover that he the said (*vendor*) and his heirs, and all and every other persons or person, now or at any time hereafter rightfully intitled either at law or in equity to

PURCHASES.

Reversion, &c.Covenant for
further as-
surance.

(1) See *ante*, p. 350, n. (3).

PURCHASES. the messuages, lands, tenements, hereditaments,

Reversion, &c.

and premises, hereinbefore granted and released or otherwise assured, or intended so to be as aforesaid, or any part thereof, or any estate or interest therein, from, through, under, or in trust for him or them (1), shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the costs and expense of the said (*purchaser*) his heirs or assigns, make, do, acknowledge, levy, suffer, execute, and perfect, [or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected], all and every such further and other lawful and reasonable acts, deeds, conveyances, matters, and things whatsoever, [whether by fine or fines, with or without proclamations, common recovery or common recoveries, release, confirmation, declaration or limitation of or to any use or uses, deed or deeds enrolled, the enrolment of these presents, or other proper assurance or assurances, of record or not of record], for the further, better, more perfectly, and absolutely or satisfactorily granting, releasing, conveying, confirming, and assuring the same hereditaments and premises, now in remainder or reversion as aforesaid, during the continuance of the estate for life of the said (*tenant for life*), and the possession thereof upon and immediately after the

(1) If the vendor be entitled by devise or descent, add, "or the said (*devisor or ancestor*) deceased, (other than the said (*tenant for life*) so far as concerns his life-estate or interest therein."

decease or other sooner determination of the **PURCHASES.**
estate for life of him the said (*tenant for life*), Reversion, &c.
with their and every of their rights, members,
appendants, and appurtenances, unto and to
and for the use, behoof, and benefit of the said
(*purchaser*) his heirs and assigns, free from in-
cumbrances as aforesaid, in such manner and form
as he the said (*purchaser*) his heirs or assigns,
or his or their counsel in the law (being of the
degree of a barrister) shall advise and require,
[and prepare and tender for execution (if the
nature thereof permit), so that such further assur-
ance or assurances, or any of them, do not contain
or imply any further or other warranty or cove-
nant than against or on the part of the person or
persons who shall be required to make or execute
the same, his, her, or their devisors, ancestors,
heirs, executors, and administrators, and his, her,
or their own respective acts, deeds, omissions, or
defaults; and so that the person or persons, who
shall be required to make or execute any such as-
surance or assurances, be not obliged to go from
his, her, or their then place or respective places
of abode for the making or executing the same,
without a reasonable and sufficient sum being pre-
viously paid, tendered, or secured to him, her, or
them, for or in respect of his, her, or their time,
trouble, and expenses, which said acts, deeds, and
assurances respectively, shall be and enure (unless
otherwise declared or expressed), in confirmation
of these presents, and of the estate and interest
mentioned or intended to be hereby granted and

PURCHASES. released, or otherwise assured] (1). IN WIT-
Reversion, &c. NESS, &c.

Title deeds.

(1) If any of the title deeds in the possession of the vendor relate to other lands of the vendor of greater or equal value, add a covenant for their production, as *ante*, p. 183, 196, but limiting the time of production as to such as are in the possession of the tenant for life, "from and after the decease, or other sooner determination of the estate for life of the said (*tenant for life*)," or prepare a separate deed for that purpose, agreeably to the form referred to, INDEX *voce* DEEDS, with a similar qualification.

Provisoes, &c.

See various provisos, &c. to be added for answering particular intentions of parties, or circumstances of title, No. XVI. *ante*, p. 160, and also the riders at the end of No. XVI. *ante*, p. 188, et seq.

Execution, &c.

As to the mode of execution, attestation, form of receipt for consideration money, &c. see No. XVI. p. 185, et seq.

Stamp.

. As to the enrolment of this conveyance, see *ante*, p. 345.
 By the late stamp acts, it is enacted that where property is conveyed by lease and release, or feoffment, and by bargain and sale enrolled, the release or feoffment shall be deemed the principal deed with respect to the ad valorem duty, and the bargain and sale be charged only with a common deed stamp, and see *ante*, end of the INTRODUCTION.

No. XXV.

Conveyance by Lease and Release (1) of an Equity of Redemption of Freehold Lands to a Purchaser, the Mortgage being in Fee.

Variations where the Mortgage was for a Term.

Where the Mortgagee himself is the Purchaser.

Where the Conveyance is by indorsement on the Mortgage Deed.

Where it is of a Part only of the Premises mortgaged.

Where Part of the Premises are Copyhold.

THIS INDENTURE, of two parts, made the

(1) As an equity of redemption cannot be made the subject of a statutable use, it being considered in the nature of a trust estate, and capable of being aliened only as such, *Boscarick v. Burton*, 1 Chan. Ca. 217, *Philips v. Hale*, 1 Rep. Chan. 190, (the legal estate being in the mortgagee) (*sed vid.* *Shrapnel v. Vernon*, 2 Bro. Chan. Rep. 271, where it is said, that an equity of redemption may be the subject of a bargain and sale, and see 1 Atk. 605. 2 ib. 15), the most scientific mode of conveying this species of property is by *grant*, or *assignment*, if it be made to a *stranger*, and by a common *release* if to the *mortgagee* himself; but a *lease and release* is more usually adopted, in order that should there be any legal interest remaining in the mortgagor, by reason of any defect in the mortgage deeds, it may pass by the bargain and sale for a year, and give effect to the release as the conveyance of a reversionary estate, and should there not be it will pass by the word "grant" in the one case, and "release" in the other. And per Hardwicke, Chancellor, "an equity of redemption has always been considered as an estate in the land, and not a mere right only, but such an estate of which there may be a seisin," 1 Atk. 605.

Mode of conveying an equity of redemption.

PURCHASER.	day of	[in the	year of the reign,
Equity of Redemption.	&c. and]	in the year of our Lord	BETWEEN
	(the vendor) of, &c.	of the one part (1), and	
Parties.	(the purchaser) of, &c.	of the other part.	
Recital of mortgage.	WHEREAS (2) by indentures of lease and release, bearing date respectively the and days of , which was in the year , and made or expressed to be made between the said (vendor) of the one part, and (the mortgagee) therein described to be of, &c. of the other part, the messuages, lands, tenements, and hereditaments therein and hereinafter particularly described, were conveyed and assured unto and to the use of the said (mortgagee), his heirs and		

Wife. (1) As the wife of a vendor is not entitled to dower out of lands of which the inheritance was in mortgage at the time of the marriage (the seisin as to such lands being in the mortgagee and not in the husband), the wife in such cases need not be a party to the conveyance, and see *Dixon v. Saville*, 720, but when the mortgage was for a term of years only, it will be otherwise, as the wife's title will attach upon the husband's seisin of the reversion, expectant on the determination of the term, 3 Elem. Conv. 2d edition, 489, ib. n. (1).

Mortgage for a term. (2) If the mortgage were for a term of years, recite the mortgage deed.

Mortgagee purchaser. But where the mortgagee himself becomes the purchaser, the equity of redemption is frequently conveyed to him by release alone, which may be indorsed upon the back of the mortgage, in which case the recital of the mortgage will be unnecessary.

Indorsement. An indorsement of this kind is frequently made by deed poll, but as it will be proper that there should be covenants by the vendor with the purchaser, that he has not incumbered, and for further insurance, an indenture is a more proper form, as it is in all cases where any interest or obligation proceeds reciprocally from each party.

assigns for ever, subject nevertheless to a proviso therein contained, that if the said (*vendor*), his heirs, executors, administrators, or assigns, should pay, or cause to be paid, unto the said (*mortgagee*), his executors, administrators, or assigns, the sum of £ , together with interest for the same, after the rate of £5 per cent. per annum, on the day of then next ensuing, he the said (*mortgagee*), his heirs, executors, administrators, or assigns, should and would, upon the request and at the expense of the said (*vendor*), his heirs or assigns, convey and assure all and every the said messuages, lands, tenements, and hereditaments unto and to the use of him the said (*vendor*), his heirs or assigns, or such other person or persons, and in such manner as he or they should direct, free from all incumbrances occasioned by him the said (*mortgagee*), his heirs or assigns, as by reference to the said hereinbefore in part recited indenture of release will more fully appear (1). AND WHEREAS the said sum of

PURCHASES.

*Equity of
Redemption.*

Condition forfeited.

(1) If part of the premises be copyhold, recite the surrender ; Copyholds.
and if the mortgagee was admitted purchaser thereto, add,

“ AND whereas default was made, &c. (*as above*) whereby the estate and interest of the said (*mortgagee*) became absolute at law, and the said (*mortgagee*) at a court holden, &c. was admitted to the said premises, to hold the same to him and his heirs, according to the surrender, at the will of the lord according to the custom, &c. freed and discharged of and from all claims and demands of him the said (*mortgagor*) and his heirs. AND whereas there is now due to the said (*mortgagee*), &c.”

PURCHASES.

*Equity of
Redemption.*

Sum now due.

Contract for
purchase.

was not paid to the said (*mortgagee*) at the time in the said in part recited indenture mentioned for that purpose, nor has the same since been paid, whereby the estate and interest of the said (*mortgagee*) in the said hereditaments became and still is absolute at law; but nevertheless redeemable in equity, on payment of the principal sum and the interest now due thereon. AND WHEREAS there is now due to the said (*mortgagee*) upon the said in part recited mortgage the said principal sum of £ only, all interest for the same having been paid up to the day of (1). AND WHEREAS the said (*purchaser*) hath contracted with (2) the said (*vendor*) for the absolute purchase of the said hereditaments, subject to the said in part recited mortgage, and the said principal sum £ due thereon, with the growing interest thereof, at the price or sum of £ (3).

(1) Or, (*if the case be so*),

“ The sum of £ being the said principal sum of £ and the further sum of £ for arrears of interest for the same.

Auction.

(2) If the estate were sold by auction, make the recital of the contract, and of the payment of the purchase money, conformably to precedent No. XV. n. (5 and 8).

Mortgagee the
purchaser.

(3) If the mortgagee be the purchaser, say,

“ Hath contracted, &c. for the absolute purchase of the said hereditaments, and the equity of redemption of him the said (*vendor*) therein, at the sum of £ out of which said sum it has been agreed that the said (*purchaser*) shall deduct and retain the said sum of £ , so due and owing to him upon security of the said premises as aforesaid.”

NOW THIS INDENTURE WITNESSETH (1), that in pur- PURCHASES.
 suance and execution of the said contract, and in
 consideration of the sum of £ of lawful
 money of the United Kingdom of Great Britain
 and Ireland, of English value and currency (2),
 to the said (*vendor*) in hand paid (3) by the said
 (*purchaser*) at or immediately before the sealing and
 delivery of these presents (4), the receipt whereof,
 [and that the same is in full for the absolute pur-
 chase of the messuages, lands, tenements, and
 hereditaments hereinafter described], subject to

*Equity of
Redemption.*

WITNESS,
the vendor in
consideration of
the purchase
money.

(1) For the operation and reason of such parts of the deed upon which no remarks are here made, see the notes to No. XV. *ante*, p. 182, *et seq.*

(2) If the mortgagee be the purchaser, add,

Mortgagee the
purchaser.

“ So due and owing to the said (*purchaser*) for principal and interest upon the security of the said lands and hereditaments as aforesaid, and of the release hereinafter contained; and also for and in consideration of the further sum of £ of like lawful and current money, in hand well and truly paid,” &c. *as in the text.*

If the consideration be paid otherwise than in money, or at any other time than at the execution of the conveyance, see the variations subjoined to No. XVI. p. 167, n. (8). Consideration.

(3) If the sale were by public auction, see *ante*, No. XVI. p. 163, n. (4). Auction.

And if the sale was by the direction of the Court of Chancery or Exchequer, see the variation subjoined to No. XVI. p. 188, 191. Sale by order of court.

(4) If the conveyance be accompanied by a bargain and sale to be enrolled, which, unless the mortgagee himself is the purchaser, is proper, by reason of the title deeds not being delivered over to him, see *ante*, p. 171, n. (9), and for the form of such bargain and sale, see *ante*, p. 204. Bargain and sale to be enrolled.

PURCHASES.

*Equity of
Redemption.*

Grants and re-
leases.

the said hereinbefore in part recited mortgage (1), and of all and singular the equity and right of redemption of him the said (*vendor*) of and in the same, the said (*vendor*) DOTH hereby expressly acknowledge [and of and from the same doth fully and absolutely acquit, release, discharge, and exonerate the said (*purchaser*), his heirs, executors, administrators, and assigns, and also the said premises, by these presents]. He the said (*vendor*) HATH granted, bargained, sold, aliened, and released (2), and by these presents doth grant, bargain, sell, alien, release, and confirm unto the said (*purchaser*) and his heirs (3),

Mortgagee the
purchaser.

(1) If the mortgagee be the purchaser, these words may be omitted.

"Grant, re-
lease," &c.

(2) Where the conveyance of the equity of redemption is to a stranger, the word "grant" is the operative word of transfer, and where to the mortgagee himself, the word "release;" care must therefore be taken, in those respective cases, that these words be inserted, and where it is to the mortgagee himself, the words "remise and quit claim," may be properly added to that of "release."

Mortgagee the
purchaser.

(3) If the mortgagee be himself the purchaser, say,

"All that and those the said messuage or messuages, lands, tenements, and other the hereditaments described or comprised in the hereinbefore in part recited indenture, mentioned to bear date the day of , with all and every the rights, members, and appurtenances to the same hereditaments now or heretofore belonging or in any-wise appertaining; and also all that the said proviso or agreement for the redemption and re-conveyance of the said messuages, &c. in the said in part recited (or within written indenture described), and all equity and right of redemption of or in him the said (*vendor*) concerning the same and all the

ALL (1), &c. or howsoever otherwise, the said messuages, lands, tenements, and hereditaments, or any of them, now are or is, or heretofore were or was situated, tenanted, called, known, or described, and also all other (2) the messuages, lands, tenements, and hereditaments (if any), comprised in the indenture of bargain and sale for a year, hereinafter referred to. AND also all [(3) out-houses,

PURCHASES.

Equity of Redemption.

Parcels.

General appurtenances.

estate, &c. To the end and intent, that he the said (*purchaser*) and his heirs, shall and may, henceforth and for ever peaceably and quietly have, hold, retain, and enjoy, the said (*or the within mentioned*) lands and hereditaments, with the appurtenances, unto and to the use and behoof of him the said (*purchaser*), his heirs and assigns, for ever freed and discharged of and from the said proviso or agreement for redemption of the said premises, and all other right or equity of redemption whatsoever."

Or if the release be by indorsement,

Indorsement.

"All and every the messuages, &c. and other the hereditaments and premises described or comprised in or by the within written indenture, with the rights, members, appendants, &c."

And proceed to add,

All the estate, &c. *post*, p. 365, margin. •

(1) Here describe the lands as in the mortgage deeds, referring, at the same time, to any variations which may have since taken place by new buildings or otherwise, see *ante*, No. XV. p. 128, n. (13), No. XVI. p. 272, n. (1), and No. XXVII. Parcels.

(2) Where the mortgagee is the purchaser, and the conveyance is made by release alone, this reference must of course be omitted. So also if the mortgage was by *demise* for a term. Mortgagee the purchaser.

(3) See general words applicable to different kinds of real property, No. XVI. p. 173, n. (15), and INDEX VOC. GENERAL WORDS. General words.

PURCHASES.

Equity of
Redemption.

Reference to
the bargain and
sale for a year.

buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, benefit and advantage of ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common of every kind, and all, and all manner of other] rights, privileges, easements, appendants, and appurtenances whatsoever, to the said hereditaments and premises, or any part thereof belonging [or in anywise appertaining, or reputed, or deemed so to be, or with the same or any of them, now or heretofore holden, used, occupied, or enjoyed]; (ALL which said messuages, lands, tenements, and hereditaments, are now in the possession of, or legally vested in the said (*purchaser*) by virtue of a bargain and sale for a year (1) to him thereof made by the said (*vendor*) for five shillings consideration by an indenture bearing date on the day next before the day of the date hereof, and by force of the statute made for transferring uses into possession)

Bargain and
sale for a year.

Mortgagee the
purchaser.

(1) No bargain and sale for a year is absolutely necessary for the conveyance of an equity of redemption, *sed vide ante*, p. 35, n. (1), and where the mortgagee himself is the purchaser, it can hardly be considered as capable of answering any useful purpose; in such case, therefore, this and the preceding reference to that instrument may be omitted.

See the form of this bargain and sale, where it is deemed requisite, *ante*, p. 110, 111.

and the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises; and the rents, issues, and proceeds thereof, to arise or become payable from the day of now last past. And all the estate, right, title, equity or right of redemption, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity, of him the said (*vendor*) in, to, out of, upon, or respecting the said hereditaments and premises, or any part thereof: TOGETHER with a counterpart of the said in part recited indenture of mortgage, and all benefit and advantage thereof, and also all other deeds, muniments, writings, and evidences, in anywise relating to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, which now are or hereafter shall or may be in the possession or lawful power of the said (*vendor*) his heirs or assigns, or of any person or persons from whom he or they now or hereafter can or may procure the same, without action or suit at law or in equity, and true and attested copies (duly stampt) when and as the said (*purchaser*) his heirs or assigns shall require the same, of all deeds, muniments, writings, and evidences (not being of record), so in his or their custody or power, as aforesaid, which in anywise relate to the same hereditaments and premises, or any of them, jointly with other hereditaments or property of equal or greater value; such copies, when first

PURCHASES.

Equity of Redemption.

*

Grant of title deeds.

And copies.

PURCHASES.

*Equity of
Redemption.*

To hold to the
purchaser in
fee-simple.

required, to be made and delivered at the expense of the said (*vendor*) his heirs, executors, or administrators, but all future copies to be made and taken at the expense of the person or persons requiring the same. TO HAVE AND TO HOLD the said messuages, lands, tenements, and hereditaments, and all and singular other the premises hereinbefore described, and hereby granted and released, or otherwise assured, or intended so to be, with their respective rights, members, and appurtenances, subject (1) to the said hereinbefore in part recited mortgage, and to the payment of the said sum of £ and the interest to grow due thereupon, from and after the day of now last past (2), and the said full and clear right, or equity of redemption thereof, unto the said (*purchaser*) and his heirs, to the only proper use and behoof of him the said (*purchaser*) his heirs and assigns for ever (3). AND the said (*vendor*) for himself, his heirs, executors, and administrators, doth hereby covenant and declare, with and to the said

Mortgagee
purchaser.

(1) If the mortgagee be the purchaser, omit as before, *ante*, p. 365.

Mortgagee the
purchaser.

(2) If the mortgagee be the purchaser, omit the words within inverted commas, and add

“ Freed and absolutely exonerated and discharged of and from all equity and right of redemption whatsoever.”

Copyhold.

(3) If any part of the premises be copyhold, and the mortgagee has been admitted, add here a covenant to surrender them, as *ante*, p. (236). But as an equity of redemption of copyholds is a *freehold* interest, see 1 Watk. Cop. 60. n. (u), ib. 120, it will pass by release alone without a surrender, when the mortgagee has not been admitted.

(*purchaser*) his heirs and assigns, in the manner following (that is to say (1)) that he the said (*vendor*) hath not at any time heretofore made, done, executed, or knowingly occasioned or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by means whereof, the equity or right of redemption of him the said (*vendor*) of or in the hereditaments and premises hereinbefore described, and granted and released, or otherwise assured, or intended so to be, is, can, shall, or may be released, discharged, or extinguished, or charged, incumbered, or otherwise prejudicially affected in any manner howsoever: And also that all interest due for, upon, or in respect of the said principal sum of £ has been, and is fully paid and satisfied up to the day of , now last past (2), and that the said premises or any part thereof are not, nor is to the knowledge of the said (*vendor*) charged or chargeable with the payment of any sum or sums of money by him, or other person or persons whomsoever, except only the said sum of £ and the accruing interest thereupon, as hereinbefore is recited. AND further, that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, exe-

PURCHASES.

Equity of Redemption.

Covenant by vendor that the equity of redemption is not incumbered, &c.

That all interest has been paid.

And that he is seised in fee of the land, (subject to the mortgage.)

(1) If the mortgagee be the purchaser, omit this covenant, and say,

“ That, for and notwithstanding, &c. he the said (*vendor*) at the time of the sealing,” &c. as in next page. *

Mortgagee the purchaser.

(2) If the mortgagee be the purchaser, omit this declaration of interest having been paid up.

PURCHASES.

*Equity of
Redemption.*

•

cuted, or knowingly occasioned or suffered by him the said (*vendor*(1)) to the contrary, he the said (*vendor*) at the time of the sealing and delivery of these presents, is lawfully and rightfully entitled to a full, certain, clear, and absolute equity and right of redemption of and in all and singular the messuages, lands, tenements, and hereditaments hereinbefore described, and granted and released, or otherwise assured, or intended so to be, and also in like manner (subject only to the said in part recited mortgage) seised in his demesne as of fee (2) in his own right and to his own use, of all and singular the same hereditaments and premises, as of and for a good, perfect, clear, absolute, and indefeasible estate of inheritance, in fee simple, in possession, and in severalty, without the said estate or premises being subject or liable to any manner of trust,

Vendor taking
by devise or
descent.

(1) If the vendor be entitled by devise or by descent, add
“ Or the said (*devisor*) deceased,” or “ any of the ancestors of the said (*vendor*).”

And see No. XV. p. 141. n. 39. and No. XVI. p. 178. *et seq.* in notes.

Mortgagee the
purchaser.

If the mortgagee be the purchaser, and the mortgage be in fee, the covenants that the vendor is seised in fee of the land, subject to the mortgage, that he has a right to convey, and that the purchaser shall quietly enjoy, may be omitted, if it be wished that the deed should be very short, he having already entered into these covenants with the mortgagee in the mortgage deed; the covenant for further assurance should, however, be retained, so far as regards the conveyance of the equity of redemption.

Indorsement.

And in this case the release to the mortgagee may properly be by indorsement.

condition, qualification, restriction, matter, or thing whatsoever, expressed or implied, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever, subsisting leases and agreements for leases of which the said (*purchaser*) hath notice, only excepted (1). AND that for and notwithstanding any such act, deed, matter, or thing as aforesaid (except as aforesaid), he the said (*vendor*) now hath in himself, full power, and lawful and absolute right and title to grant and release the said equity and right of redemption of and in the said hereditaments and premises, and to grant, bargain, sell, release, and assure all and singular the same hereditaments and premises, and the possession, reversion, and inheritance thereof, (subject only as aforesaid) unto and to and for the use and behoof of the said (*purchaser*) his heirs and assigns in the manner aforesaid, and according to the true intent and meaning of these presents. And further, that he the said (*purchaser*) his heirs and assigns, shall or lawfully may, immediately upon the sealing and delivery of these presents, (subject only and without prejudice to the estate, right, and title of the said (*mortgagee*) his heirs and assigns), enter into and upon, and hold, possess, and enjoy, all and singular the same hereditaments and premises, with their and every of their respective rights, members, and appurtenances,

PURCHASES.

Equity of Redemption.

And hath right to convey.

That the purchaser shall quietly enjoy.

(1) If the leases are in possession of the mortgagee, this exception will of course be omitted.

Deeds.

PURCHASES.

*Equity of
Redemption.*

Free from in-
cumbances.

and receive and retain the rents, issues, profits, and proceeds thereof, to and for his and their own use and benefit, (subject only as aforesaid) without any manner of hindrance, interruption, claim, or demand whatsoever, by or from the said (*vendor*) or his heirs, or any person or persons now or hereafter having or rightfully claiming any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or concerning the said hereditaments and premises, or any part thereof, or any estate or interest therein, from, through, under, or in trust for him, them, or any of them, (save only and except the said (*mortgagee*) his heirs and assigns, so far as respects his estate and interest in the said premises, under or by virtue of the said hereinbefore in part recited mortgage (1), and persons claiming through, under, or by virtue of any such leases, or agreements for leases as aforesaid), so far as respects their respective estates and interests under or by virtue of the same. AND that free and clear, and clearly and absolutely discharged and exonerated or otherwise, by and at the expense of the said (*vendor*) his heirs, executors, or administrators, effectually protected, and indemnified from, and against all former and other [grants, bargains and sales, releases, mortgages, conveyances and assurances, descents, uses, trusts, limitations, entails, conditions, estate, right and title of or to dower,

Mortgagee the
purchaser.

(1) If the mortgagee be the purchaser, this exception may be omitted.

remainders, reversions in the crown or elsewhere, judgments, decrees (1), recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king, or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, liens, and incumbrances whatsoever, which at any time or times heretofore have been, or which at any time hereafter shall or may be made, executed, created, occasioned, or knowingly suffered by the said (*vendor*) (2) or any other person or persons claiming, or having title to claim any estate, right, title, or interest, either at law or in equity, from, through, under, or in trust for him, or by or through his or their acts, means, or defaults, (the said in part recited mortgage, and such leases and agreements as aforesaid only excepted) AND moreover, that he the said (*vendor*) and his heirs, and all and every person or persons, now or at any time hereafter rightfully claiming, or entitled to claim any estate or interest, at law or in equity, in, to, or relating to the hereditaments and premises hereby granted and released, or otherwise assured, or intended so to be, or any part thereof, from,

PURCHASES.

*Equity of
Redemption.*

Covenant for
further as-
surance.

(1) A decree of a court of equity, is equally a lien upon an equity of redemption, or other equitable interest, as a judgment at law is upon a legal one. *Gray v. Chiswell*, 9 Ves. jun. 125. *Perry v. Phelps*, 10 ib. 34.

(2) If the vendor be entitled by devise or descent, see *ante*, p. 368, n. (1).

PURCHASES. through, under, or in trust for him or them (1),
 (other than (2) and except the said (*mortgagee*)
 his heirs and assigns, and such lessees as aforesaid,
 their respective executors, administrators, and as-
 signs, in respect of their several interests), shall and
 will from time to time, and at all times hereafter,
 upon the request, and at the cost and expense of the
 said (*purchaser*) his heirs or assigns, make, do, ac-
 knowledge, levy, suffer, execute, and perfect, all
 and every such further and other lawful and
 reasonable acts, deeds, conveyances, assurances,
 matters, and things whatsoever, for the further,
 better, and more effectually or satisfactorily con-
 veying and assuring the same hereditaments and
 premises, [with their and every of their rights,
 members, appendants, and appurtenances], and all
 equity and right of redemption of him the said
 (*vendor*) and his heirs therein, unto, and to and
 for the use and behoof of the said (*purchaser*)
 his heirs and assigns, in such manner and form as
 he the said (*purchaser*) his heirs or assigns, or
 his or their counsel in the law, (being of the de-
 gree of a barrister) shall reasonably require, [and
 prepare and tender (if the nature thereof per-
 mit) for his or their signature and execution;
 so that such further assurance or assurances,
 or any of them, do not contain nor imply any
 further or other warranty or covenant, than
 against or on the part of the person or persons

Mortgagee the
 purchaser.

(1) See *ante*, p. 368, n. (1).

(2) If the mortgagee be the purchaser, this exception may be omitted.

who shall be required to make or execute the same, his, her, or their devisors, ancestors, heirs, executors, and administrators, and his, her, or their own respective acts, deeds, omissions, or defaults; and so that the person or persons who shall be required to make or execute any such assurance or assurances, be not obliged to go from his, her, or their then place or respective places of abode, for the making or executing the same, without a reasonable and sufficient sum being previously paid, tendered, or secured to him, her, or them, for or in respect of his, her, or their time, trouble, and expenses; which said acts, deeds, and assurances respectively, shall be and enure (unless otherwise declared or intended) in confirmation of these presents, and of the estate and interest hereby, or mentioned, or intended to be hereby granted and released (1)]. AND the

PURCHASES.

*Equity of
Redemption.*

Covenant by
purchaser to
pay off the
mortgage.

(1) If a part only of the mortgaged premises are sold, add a proviso that the residue shall be a security for the debt, as,

Part only of
premises sold.

AND MOREOVER, that the said messuages, lands, and hereditaments, hereinbefore excepted out of the present sale and conveyance as aforesaid, shall from henceforth form and be an indemnity and security to the said (*purchaser*), his heirs and assigns, and the messuages, lands, and hereditaments hereby released or intended so to be, and every of them, from, against, and in respect of all mortgages, annuities, judgments, extents, executions, charges, and incumbrances, now secured upon or affecting the same or any of them, other than and except the said mortgage debt, interest, costs, and securities, now vested in the said (*mortgagee*), and that in case of the said last mentioned mortgage debt, interest, and cost being discharged by the said (*purchaser*) his heirs, executors, administrators, or assigns,

PURCHASES.

Equity of
Redemption

said (*purchaser*) for himself, his heirs, executors, and administrators, doth hereby covenant and declare with and to the said (*vendor*) his heirs, executors, and administrators, in the manner following, (that is to say) that he the said (*purchaser*) (1) his heirs,

pursuant to the aforesaid agreement in their behalf, the messuages, lands, and hereditaments, hereby released, or any of them, shall stand and be charged with, or subject, or liable to any mortgages, annuities, judgments, extents, and executions, charges, or incumbrances as aforesaid, then and in such case the said other messuages, lands, and hereditaments, so hereinbefore excepted as aforesaid, shall at the costs and expense of him the said (*vendor*) his executors or administrators, be conveyed and assured by him, his heirs or assigns, and by the said (*mortgagee*) his heirs or assigns, and all other proper parties, if any, unto and to the use of the said (*vendor*) his heirs and assigns, for the purpose of effecting such indemnity and securities to the messuages, lands, and hereditaments hereby released, and every of them as aforesaid, with full powers of mortgage and sale, and of giving acquittances to mortgagees and purchasers for their respective consideration monies, and the other necessary and proper powers in such behalf, but with the ultimate trusts of the estate so to be conveyed, and of any monies to arise by mortgage or sale thereof, or of the residue of the same for the said (*vendor*) his heirs, executors, administrators, and assigns respectively. IN WITNESS, &c.

Mortgagee the
purchaser.

(1) If the mortgagee be himself the purchaser, this covenant for paying off the mortgage, &c. must of course be omitted. Indeed, it seems not to be essential in any case, as in the assignment of an estate subject to an incumbrance, equity raises an obligation in the grantee, to indemnify the vendor against such incumbrance, without any express stipulation to that effect. See *Pember v. Matthews*, 1 Brow. Ch. Rep. 52. 7 Ves. Jun. 337.

Mortgagee for a
term, the pur-
chaser.

If the mortgage was for a term of years, and the mortgagee be the purchaser, see rider (A) *post*, p. 378.

executors, administrators, or assigns, shall and will well and truly pay and satisfy, or cause to be paid and satisfied, the said principal sum of £
 so now due and owing to the said (*mortgagee*) on the security of the hereditaments and premises hereby released or otherwise assured, or mentioned so to be, together with all interest which shall or may from time to time grow due, and become payable for or in respect of the same, in the mean time, by virtue of the said hereinbefore in part recited indenture of release, on such days and times, and in such manner as in or by the same indenture is appointed for payment thereof, and also shall and will, from time to time and at all times hereafter, well and effectually save, defend, keep harmless and indemnified, the said (*vendor*) his heirs, executors, and administrators, and his and their goods and chattels, and lands and tenements, of, from, and against the same respectively, and all actions, suits, proceedings, costs, charges, and expenses, to be incurred or occasioned by, or by reason of any default in the payment thereof, or by reason of any other act, deed, omission, or default of him the said (*purchaser*) his heirs, executors, administrators, or assigns, in respect of or concerning the same. PROVIDED ALWAYS, (1) and the said (*purchaser*) doth hereby expressly declare and direct, that as between the real and personal representatives

PURCHASES.

Equity of Redemption.

Declaration that the sum due on mortgage shall be paid out of the purchaser's personal estate

(1) This proviso is to be inserted or omitted according to the intention of the purchaser.

PURCHASES.

*Equity of
Redemption.*

of him the said (*purchaser*) the said sum of £ so charged or secured upon the lands and hereditaments hereinbefore described, and hereby granted and released, or otherwise assured, or intended so to be as aforesaid, shall be considered as the proper debt of him the said (*purchaser*) and be charged and chargeable upon, and paid off and satisfied out of his personal estate, property and effects accordingly, or so far as the same will extend, and that the said lands, hereditaments, and mortgaged premises, or any of them, or the heirs or assigns of the said (*purchaser*) shall not be, or be deemed subject or liable to the payment thereof, or of any part thereof, or of any arrears of interest due for the same, except only so far as the personal estate and effect of him the said (*purchaser*) shall fall short and be insufficient for that purpose (1). IN WITNESS, &c.

Mortgage to be
paid off by the
personalty.

(1) The disputes which have arisen between the real and personal representatives of purchasers of the equity of redemption of a mortgaged estate, as to whether the mortgage ought to be paid off out of the real or personal assets of the purchaser, as the primary fund for that purpose, and it having been determined that the purchaser's covenant with the mortgagor, for paying off the mortgage, which is merely for the indemnity of the vendor, will not alone make it his own personal debt, *Butler v. Butler*, 5 Ves. Jun. 534, renders a declaratory proviso of the above nature extremely desirable in purchases of this kind. See *Evelyn v. Evelyn*, 2 P. Wms. 659, and *vid. ib.* 664, n. (1). *Tweddell v. Tweddell*, 2 Brow. Ch. Rep. 101, 152. *Butler v. Butler*, 5 Ves. Jun. 534. *Warding v. Ward*, *ib.* 670, and 7 *ib.* 332. *Ripley v. Waterworth*, *ib.* 425, and see also *Sug. Vend. & P.* 149; but as it will be otherwise if he enter into a new contract

with the mortgagee as for a different time or mode of payment, **PURCHASES.**
 E. of Oxon v. Lord Rodney, 14 Ves. Jun. 417, and the proviso
 in the text need not in such case be inserted.

*Equity of
 Redemption.*

. The necessity of searching for incumbrances, previously **Searching for**
 to the execution of the purchase deed, has been noticed where the **incumbrances.**
 subject of the purchase is an equity of redemption; and there
 are few cases where this precaution can safely be dispensed with:
 and in the case of an equity of redemption it should be extended
 to decrees in equity, which are equally a lien upon an equitable
 as a judgment at law is upon a legal estate. In the case of a
 mortgagee purchasing the equity of redemption, as supposed in
 the variations to the foregoing precedent, such search seems to
 be unnecessary where the mortgagee has no notice of incum-
 brances subsequent to his mortgage; for having already the legal
 estate, and acquiring by the contract for the purchase without
 notice equal equity with a judgment or other creditor, his title
 will be unimpeachable, on the maxim that where the equity is
 equal, the law shall prevail, and an equity of redemption not
 being within the statute of frauds, is not extendable, *Lyster v.*
Dolland, 1 Ves. Jr. 431, 3 Br. Ch. Rep. 478, and see *Burdon v.*
Kennedy, 3 Atk. 739, *Scott v. Scholey*, 8 East, 467.

If, however, the mortgagee have actual or constructive notice
 of any incumbrance, although it took place subsequent to the
 mortgage, he will be bound by it. *Greswold v. Marsham*,
 2 Chan. Ca. 170, *Crisp v. Heath*, 7 Vin. Ab. 52 E. pl. 2.

As payment of the mortgage money to the mortgagee by the **Notice to the**
 mortgagor will be good, although the mortgagee has previously **mortgagee.**
 transferred the mortgage to another, unless he have express
 notice of such transfer, *Williams v. Sorrell*, 4 Ves. Jun. 389.
 and as it should seem that the same rule would apply to the
 case of a mortgagee lending any further sum to the mortgagor,
 after he had transferred the equity of redemption; a purchaser
 of premises subject to a mortgage should immediately upon the
 execution of the deeds, give notice thereof to the mortgagee, as
 should also an assignee of a mortgage to the mortgagor. This
 notice may be either by serving upon the mortgagee or mortgagor
 an attested copy of the purchase deed or deed of transfer, or by
 other writing under the hand of the purchaser or assignee.

As on the sale of an equity of redemption, the title deeds will **Enrolment.**

PURCHASES. be in the hands of the mortgagee, the conveyance should be enrolled or accompanied by a bargain and sale for that purpose, for the form of which, see *ante*, p. 346.

Equity of Redemption.

For forms of receipts for consideration money, see No. XVI. *ante*, p. 185, *et seq.*

Receipt.
Provisoes, &c.

For various provisos to be inserted in purchase deeds to adapt them to the intention of the parties, or circumstances of the title, see No. XVI. *ante*, p. 160, also riders at end of No. XXVI. p. 188, *et seq.*

Stamp.

As to the stamp, see *stamp act*, *ante*, end of the INTRODUCTION.

PURCHASES.

*Equity of
Redemption.*

Variation (A)

Where the mortgage was for a term of years, and the mortgagee becomes the purchaser.

AND WHEREAS, there is now due to the said (*mortgagee*) for principal and interest on his said in part recited mortgage the sum of £ , AND WHEREAS, the said principal and interest money, so due upon the security of the said premises, is considered to be the full value of the inheritance thereof, and the said (*mortgagor*) has requested the said (*mortgagee*) to accept of a conveyance to him and his heirs, in satisfaction of his said debt, which the said (*mortgagee*) has consented to do, in and in pursuance thereof, by indentures of lease and release, already prepared and engrossed, the release bearing or intended to bear even date herewith, and made between, &c. the reversion and inheritance of the said premises, are intended to be conveyed forthwith to him accordingly. AND WHEREAS, for the purposes of keeping on foot the said term of 500 years, the said (*mortgagee*) has requested the said (*mortgagor*) to concur with him in assigning the same to the said A. B. in the manner hereinafter expressed, previously to his taking a conveyance of the said inheritance, and which said (*mortgagee*) has also agreed to do. NOW THEREFORE THIS WITNESS. INDENTURE WITNESSETH, that for purposes aforesaid, and in consideration of the sum of 10s. of lawful current money of England, to the said (*mortgagee*) in hand, well and truly paid by the said A. B. at the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he the said (*mortgagee*) with the privity and consent of the said (*mortgagor*) testified by his sealing and delivery of these presents, HATH bargained, sold, assigned, transferred, and set over, and by these presents DOth bargain, sell, assign, transfer, and set over; and the said (*mortgagor*) at the request of the said (*mortgagee*) testified in like manner, and

PURCHASES.

*Equity of
Redemption.*

Mortgagee
assigns.To hold for re-
sidue of said
term.In trust to
attend, &c.

for the considerations expressed in the said indenture of release hereinbefore mentioned as bearing or intended to bear even date with these presents, HATH bargained, sold, assigned, ratified, and confirmed, and by these presents DOTH bargain, sell, assign, ratify, and confirm unto the said A. B. his executors, administrators, and assigns, ALL those the said messuages, lands, tenements, hereditaments, and all and singular other premises comprised in the hereinbefore in part recited indenture of demise, by way of mortgage, bearing or mentioned to bear date the day of and thereby demised, or otherwise assured unto the said (*mortgagee*), or intended so to be as aforesaid, and which said hereditaments and premises are the same hereditaments and premises as those of which the reversion and inheritance is intended to be conveyed to the said (*mortgagee*) and his heirs by the hereinbefore recited indenture of release mentioned to bear even date herewith. TO HAVE AND TO HOLD, to the said messuages, lands, tenements, hereditaments, and other the premises hereby bargained, sold, and assigned, or otherwise assured or intended so to be, unto him the said (*purchaser*), his executors, administrators, and assigns, for and during all the residue or remainder now to come and unexpired, of or in the said term of 500 years, so by the said indenture of the day of demised as aforesaid, BUT IN TRUST nevertheless, for the said (*purchaser*), his heirs and assigns, and to attend and wait upon the reversion and inheritance of the same premises accordingly. IN WITNESS, &c.

Release of the Reversion.

THIS INDENTURE made the day of in the year of the reign, &c. and in the year of our Lord , BETWEEN (*the vendor*) of &c. of the one part, and (*the purchaser*) of &c. of the other part. WHEREAS by indentures bearing date the day of and made between, &c. the said (*vendor*) demised the hereditaments hereinafter described, to the said (*purchaser*) for the term of 500 years, by way of mortgage, for securing the repayment of the sum of £ with interest at the

times therein mentioned. AND WHEREAS, the said sum was not paid at the time therein appointed for payment thereof, whereby the said premises became forfeited at law, but were and still are redeemable in equity; and there is now due for principal and interest on the said security, the sum of which is considered to be the full value of the reversion and inheritance of the said premises, wherefore the said (*vendor*) has proposed to the said (*purchaser*) to accept of a release of the reversion and inheritance in satisfaction of his said debts, which he has consented to do. Now THIS INDENTURE WITNESSETH, that in consideration of the sum of £ , so now justly due and owing to the said (*vendor*) by the said (*purchaser*) upon the security of the hereditaments hereinafter described, as hereinbefore is mentioned, and which he the said (*vendor*) doth hereby fully acknowledge, and also for and in consideration of the sum of 10s. also paid to the said (*vendor*) by the said (*purchaser*), the receipt, &c. He the said (*vendor*) HATH granted, bargained, sold, aliened, and released, and by these presents DOTH grant, bargain, sell, alien, and release, and confirm unto the said (*purchaser*), ALL, &c. and which said messuages, hereditaments, &c. are the same hereditaments as were demised to him by the said (*purchaser*) by the said in part recited indentures as aforesaid, and the reversion and inheritance thereof, and all the estate, &c. To hold, &c. to the said (*purchaser*) his heirs and assigns for ever. *Add usual covenants for title or not, as ante, p. 368. n. (2).*

PURCHASES.

Equity of Redemption.

Witness
vendor releases reversion.

PURCHASES.

*Undivided
Moiety, &c.*

No. XXVI.

*Conveyance of a Moiety or other undivided Part of
Freehold Hereditaments to a Purchaser (1).*

*Variations where such Moiety, &c. is holden in Joint-
tenancy, in Co-parcenary, or in Common.*

Where a Co-tenant is the Purchaser.

Where the Vendor's Wife is entitled to Dower.

*Where the Conveyance to the Purchaser is intended to
be to uses to prevent Dower, &c. &c. as in margin below.*

THIS INDENTURE of _____ parts, made the

Vendor joint-
tenant, tenant
in common or
co-parcenary.

(1) Whether the estate of which a moiety or other part is intended to be conveyed to a purchaser be holden in *joint-tenancy*, in *co-parcenary*, or in *common*, such moiety, &c. may be conveyed to a *stranger* by any mode of conveyance calculated to pass the freehold; but if the conveyance be made to a *co-tenant*, some distinctions must be attended to; as if the estate be holden in *joint-tenancy*, (where the several tenants are, to all purposes, equally seised of the parts of their respective companions, as of their own) a simple release will be a sufficient, and a proper mode of conveyance; and if it be holden in *co-parcenary*, it may also be by a release alone, or by lease and release, bargain and sale, or feoffment; but if it be holden by two or more persons as tenants in *common*, the share of one of them cannot be conveyed to the other by a simple release for want of possession in the releasee; and consequently must be conveyed by some species of assurance calculated to transfer the possession, which may be done by either of the species of assurance last mentioned. See the reasons of these distinctions, Watk. Princ. bk. 1. c. 1; 3 Elem. Conv. c. 8 and 9.

day of . [in the year of the PURCHASES.
 reign, &c. and] in the year of our Lord
 BETWEEN (1) (*the vendor*) of, &c. of the Undivided
 one part, and (*the purchaser*) of, &c. of the Moiety, &c.
 the other part. WHEREAS, &c. (2). AND WHEREAS
 the said (*vendor*) hath contracted with (3) the said
 (*purchaser*) for the absolute sale to him of the
 said undivided moiety or half part (*or as the case*
may be) of him the said (*vendor*) of and in the
 said hereditaments, [or the hereditaments herein-
 after described, being part or parcel of the mes-
 suages, lands, and hereditaments, comprised in
 the said in part recited], free from incumbrances,
 (except as hereinafter is mentioned) at the sum of
 and hath required that the same may
 be conveyed to him in the manner hereinafter
 expressed.] NOW THIS INDENTURE WITNESSETH (4),
 that in pursuance and execution of the said con-
 tract, and in consideration of the sum of

WITNESS the
 vendor in con-
 sideration of
 the purchase
 money.

(1) If the wife of the grantor have a title to dower out of the Wife.
 portion of the land to be conveyed, (which she may, if he be
 tenant in *common* or *co-parcenary* with his companion, but not
 if he be *joint-tenant*) make her a party, and see No. XXI.

If the conveyance is intended to be made to uses to prevent Dower.
 a title to dower, see No. XXVIII.

If the vendor took his part of the estate by purchase to uses Trustee.
 to prevent dower, see No. XXXIV. *post*.

(2) For various recitals of title, &c. see INDEX VOC. RECITAL. Recital.

(3) If the estate was sold by public auction, or in any other Auction, &c.
 way than by private contract, see *ante*, No. XVI. p. 163. n. 4.
et seq.

(4) For the reason and operation of such parts of the deed Construction,
 upon which no remarks are here made, see notes to No. XV. &c.
ante, p. 123. *et seq.*

PURCHASES. of lawful money of the United Kingdom of Great Britain and Ireland, of English value and currency, to the said (*vendor*) in hand well and truly paid (1) by the said (*purchaser*) at or immediately before the sealing and delivery of these presents, the receipt whereof, [in full (2) for the absolute purchase of the inheritance in fee-simple, in possession, of one full and undivided moiety or half part (the whole into two equal parts, being considered as divided) of and in the messuages, lands, and hereditaments hereinafter described], the said (*vendor*) DOTH hereby acknowledge, [and of and from the same doth fully and absolutely acquit, release, exonerate, and discharge the said (*purchaser*), his heirs, executors, administrators, and assigns, and the said messuages, lands, and hereditaments, by these presents,] He the said (*vendor*) HATH granted, bargained, sold, aliened, and released, and by these presents DOTH grant, bargain, sell, alien, release, and confirm unto the said (*purchaser*) and his heirs, ALL that one

*Undivided
Moiety, &c.*

Grants and releases the land, &c.

Consideration.

(1) If the consideration be other than money to be paid on the execution of the conveyance, see the variations subjoined or referred to in No. XVI. *ante*, p. 105. 107.

(2) If part of the purchase money is retained under the circumstances mentioned at the foot of the precedent, say,

“ In part of or for the purchase,” &c.

Bargain and sale enrolled.

If the release is intended to be accompanied by a bargain and sale to be enrolled, which will be proper if the vendor have not the possession of the title deeds, see *ante*, p. 171. n. (9).

If part of the purchase money be retained on account of the minority of either of the co-tenants, see *post*, rider (A).

full and undivided moiety, or half part (the whole into two equal parts being considered as divided) of and in ALL(1), &c. or howsoever otherwise, the said messuages, lands, tenements, and hereditaments, or any part thereof now are, or is, or heretofore were or was situated, tenanted, called, known, described, or distinguished; [and also of and in all other the messuages, lands, tenements, and hereditaments (if any), which are comprised in a certain indenture of bargain and sale for a year hereinafter referred to as bearing date the day next before the date hereof(2)]. TOGETHER WITH a like moiety or half part of and in all [houses(3), out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, benefit and advantage of ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber, and other trees, woods, underwoods, and the ground and soil thereof,

PURCHASES.

*Undivided
Moiety, &c.*

General appur-
tenances.

(1) Here describe the subject of the conveyance by its present and ancient name, situation, tenancy, &c.—See No. XV. p. 128. n. (13.), XVI. p. 172. n. (1), and No. XXVII.—and see descriptions applicable to different species of property, INDEX *voce* PARCELS.

Parcels.

If the vendor be entitled to a remainder or reversion expectant upon any prior estate, see No. XXIV.

Remainder, &c.

(2) If the purchaser be a joint-tenant or co-parcener with the vendor, see next page, n. (2).

Co-tenant pur-
chaser.

(3) See general words applicable to different kinds of real property, No. XVI. p. 172. n. (13), and INDEX *voce* GENERAL WORDS.

General words.

PURCHASES. mines, quarries, rights of common of every kind, and of and in all, and of all manner of other] rights, privileges, easements, appendants, and appurtenances whatsoever, to the said messuages, lands, tenements, hereditaments, and premises, or any part thereof respectively belonging, [or in anywise appertaining, or reputed or deemed so to be, or with the same or any part thereof now or heretofore holden, used, occupied, or enjoyed], except, &c. (*if so*), (ALL which said moiety or half part of and in the said messuages, lands, tenements, and hereditaments, is now in the actual possession (1) of, or legally vested in the said (*purchaser*) by virtue of a bargain and sale (2) to him thereof made by the said (*vendor*) for five shillings consideration, by indenture bearing date on the day next before the day of the date, [and executed previously to the sealing and delivery] of these presents, for the term of one year, [commencing from the day next preceding the day of the date of the same indenture;] and by force of the statute made for trans-

*Undivided
Moiety, &c.*

Reference to
the bargain and
sale for a year.

Remainder, &c.

(1) If the estate be in remainder, &c. see No. XXIV.

Purchase by a
co-tenant.

(2) See the form of the bargain and sale, *ante*, p. 110. 117.

If the land be holden by the vendor in *joint-tenancy* or *coparcenary* with the person possessing the other moiety, &c. and his or her co-tenant be the purchaser, the conveyance may be by *release* alone, without any bargain and sale for a year, in which case the reference to that assurance must of course be omitted; but if the vendor be tenant in *common* with his co-tenant, the bargain and sale for a year will be necessary.

ferring uses into possession). And the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises, and every of them respectively; and of and in the rents, issues, profits, and proceeds thereof; AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity, of him the said (*vendor*) in, to, out of, upon, or respecting the said hereditaments and premises, or any part thereof. TOGETHER with all deeds, muniments, writings, and evidences whatsoever, which in anywise relate to the same undivided moiety or half part and premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, and which now are (1) or hereafter shall or may be in the possession or lawful power of the said (*vendor*) his heirs or assigns, or of any person or persons from whom he or they can or may procure the same, without action or suit at law or in equity; and true and attested copies (duly stampd) of all other deeds(2), muniments, writings, and evidences, (not being of record,) which now are or hereafter may be so in his or their custody or power as aforesaid, in

PURCHASER.

*Undivided
Moiety, &c.*

Grant of title
deeds.

And copies.

(1) If the conveyance be of a remainder or reversion, see *Remainder, &c.*
No. XXIV.

(2) If a covenant be inserted for the production of scheduled
title deeds, add, *Schedule.*

“ Comprised in the schedule hereunder written, or here-
unto annexed, and of all other, &c.” *as in the text.*

PURCHASES.

*Undivided
Moiety, &c.*

To HOLD to the
purchaser in
fee-simple.

Covenant by
the vendor that
he is seised, &c.

Remainder, &c.

Co-tenant pur-
chaser.

Uses to prevent
dower.

anywise relating to the same moiety and premises, or any of them, jointly with other hereditaments or property of equal or greater value; such copies, when first required, to be made and delivered at the expense of the said (*vendor*) his heirs, executors, or administrators; but all future copies to be made and taken at the expense of the person or persons requiring the same.] To

HAVE AND TO HOLD the said full and undivided moiety or half part (1), hereby granted and released, or otherwise assured, or intended so to be, of and in the said messuages, lands, tenements, hereditaments, and premises hereinbefore, and in the said indenture of bargain and sale (2) described, [with all and every of the rights, members, privileges, easements, appendages, and appurtenances to the same belonging unto, “ and to and for the use and behoof of the said (*purchaser*) his heirs and assigns for ever (3).” AND

(1) If the conveyance be of a remainder or reversion, see No. XXIV.

(2) If a co-tenant with the vendor be the purchaser, see *ante*, p. 386, n. (2).

(3) If the conveyance be intended to be made to uses for preventing dower, instead of the words within inverted commas, say,

“ Unto the said (*purchaser*) and his heirs to the use of such person or persons, upon such trusts, for such estates and interests, intents, and purposes, and so charged or chargeable, whether by way of rent-charge or otherwise, and in such manner, and with and subject to such powers, declarations, and agreements as the said (*purchaser*) by any deed or other instrument in writing, to take effect in his life-time, and to be

the said (*vendor*) for himself, his heirs, executors, and administrators, DOTH hereby covenant and declare with and to the said (*purchaser*) his heirs and assigns, in the manner following (that is to say) (1) that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, or knowingly

PURCHASES.

*Undivided
Moiety, &c.*

sealed and delivered by him in the presence of and attested by two or more credible witnesses, or by his last will and testament, to be by him signed and published in the presence of and attested by three or more credible witnesses, shall direct or appoint, and in default or failure of any such direction or appointment, as to the whole or any part of the said premises, or any estate or interest therein, then as to such part thereof, of which none shall be made or take effect, to the use of the said (*purchaser*) and his assigns, during his natural life, without impeachment of or for any manner of waste, and upon the determination of that estate in his lifetime, to the use of the said (*trustee*) his executors and administrators, during the life of the said (*purchaser*) but in trust for the said (*purchaser*) and his assigns, to the intent that the present and every future wife of the said (*purchaser*) shall be barred of dower in respect of the said premises, and upon the determination of the estate so limited in use to the said (*trustee*) as aforesaid, and in the mean time subject thereto, to the use of the said (*purchaser*) his heirs and assigns for ever."—And see *post*, No. XXVIII.

If the vendor's wife be a party, add here a covenant to levy a fine; for the form of which, see Vol. II. No. XXXI. Wife.

(1) If any part of the lands be copyhold, a covenant to surrender them may be introduced here.—See the form of such covenant, No. XVIII. *ante*, p. 266. Copyhold.

If the conveyance be to uses to prevent dower, see No. XXVIII. Dower.

If the vendor took the estate to himself and a trustee, see Vol. II. No. XXXIV. Trustee.

PURCHASER.

*Covenant
Horsely, &c.*

*To hold to the
purchaser in
fee-simple.*

*Covenant by
the vendor that
he is seized, &c.*

Remainder, &c.

*Co-tenant pur-
chaser.*

*Uses to prevent
dower.*

anywise relating to the same moiety and premises, or any of them, jointly with other hereditaments or property of equal or greater value: such copies, when first required, to be made and delivered at the expense of the said *vendor* his heirs, executors, or administrators; but all future copies to be made and taken at the expense of the person or persons requiring the same.] To HAVE AND TO HOLD the said full and undivided moiety or half part (1), hereby granted and released, or otherwise assured, or intended so to be, of and in the said messuages, lands, tenements, hereditaments, and premises hereinbefore, and in the said indenture of bargain and sale (2) described, [with all and every of the rights, members, privileges, easements, appendages, and appurtenances to the same belonging unto, “ and to and for the use and behoof of the said (*purchaser*) his heirs and assigns for ever (3).” AND

(1) If the conveyance be of a remainder or reversion, see No. XXIV.

(2) If a co-tenant with the vendor be the purchaser, see *ante*, p. 386, n. (2).

(3) If the conveyance be intended to be made to uses for preventing dower, instead of the words within inverted commas, say,

“ Unto the said (*purchaser*) and his heirs to the use of such person or persons, upon such trusts, for such estates and interests, intents, and purposes, and so charged or chargeable, whether by way of rent-charge or otherwise, and in such manner, and with and subject to such powers, declarations, and agreements as the said (*purchaser*) by any deed or other instrument in writing, to take effect in his life-time, and to be

the said (*vendor*) for himself, his heirs, executors, and administrators, DOth hereby covenant and declare with and to the said (*purchaser*) his heirs and assigns, in the manner following (that is to say) (1) that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, or knowingly

PURCHASES.

*Undivided
Moiety, &c.*

sealed and delivered by him in the presence of and attested by two or more credible witnesses, or by his last will and testament, to be by him signed and published in the presence of and attested by three or more credible witnesses, shall direct or appoint, and in default or failure of any such direction or appointment, as to the whole or any part of the said premises, or any estate or interest therein, then as to such part thereof, of which none shall be made or take effect, to the use of the said (*purchaser*) and his assigns, during his natural life, without impeachment of or for any manner of waste, and upon the determination of that estate in his lifetime, to the use of the said (*trustee*) his executors and administrators, during the life of the said (*purchaser*) but in trust for the said (*purchaser*) and his assigns, to the intent that the present and every future wife of the said (*purchaser*) shall be barred of dower in respect of the said premises, and upon the determination of the estate so limited in use to the said (*trustee*) as aforesaid, and in the mean time subject thereto, to the use of the said (*purchaser*) his heirs and assigns for ever."—And see *post*, No. XXVIII.

If the vendor's wife be a party, add here a covenant to levy a fine; for the form of which, see Vol. II. No. XXXI. Wife.

(1) If any part of the lands be copyhold, a covenant to surrender them may be introduced here —See the form of such covenant, No XVIII. *ante*, p. 266. Copyhold.

If the conveyance be to uses to prevent dower, see No. XXVIII. Dower.

If the vendor took the estate to himself and a trustee, see Vol. II. No. XXXIV. Trustee.

PURCHASES.

*Undivided
Moiety, &c.*

occasioned, or suffered by him the said (*vendor*)(1) to the contrary, he the said (*vendor*) at the time of the sealing and delivery of these presents(2), is lawfully, rightly, and absolutely seised(3) in his demesne as of fee, in his own right, and to his own use, of and in the said undivided moiety or half part(4), hereinbefore granted and released, or otherwise assured, or intended so to be [of and in all and singular the messuages, lands, tenements, hereditaments, and premises hereinbefore described], as of, in, and for a good, perfect, clear, absolute, and indefeasible estate of inheritance in fee-simple, in possession, without the said estate or premises being subject or liable to any manner of trust, condition, qualification, restriction, matter, or thing whatsoever, which can or may revoke, de-

Vendor entitled
by devise, &c.

(1) If the vendor became entitled otherwise than by purchase, add,

“Or by the said (*devisor*) deceased, (*or other former owner,*)” and *if by descent*, “or by any of his ancestors.”—And see No. XV. *ante*, p. 141. n. (39), and No. XVI. p. 178. *et seq.* in notes.

Copyhold.

(2) If a part of the land be copyhold, make such additions to this and the subsequent covenants as will be found in those of No. XX. p. 269.

Purchaser
cotenant.

(3) If the sale be to a cotenant with the vendor, the purchaser will be expected, as deriving his title from one and the same source with the vendor, to be satisfied with covenants by the vendor that he has done no act to incumber his moiety; and for quiet enjoyment and further assurance, in which case the above covenants of the vendor being seised in fee, and having a right to convey, may be omitted.

Remainder, &c.

(4) If the conveyance be of a remainder or reversion, see No. XXIV.

termine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever, (leases and agreements for leases, of which the said (*purchaser*) hath notice, only excepted.) AND also, that (for and notwithstanding any such act, deed, matter, or thing as aforesaid), he the said (*vendor*) now hath in himself full power, and lawful and absolute right and title to grant, bargain, sell, release, and assure the said undivided moiety or half part, [of and in all and singular the said hereditaments and premises, and the possession, reversion, and inheritance thereof], unto "and to the use and behoof of the said (*purchaser*) his heirs and assigns in the manner aforesaid," and according to the true intent and meaning of these presents (1). AND further, that he (2)

PURCHASES.

*Undivided
Moiety, &c.*

And hath right to convey.

That the purchaser shall quietly enjoy.

(1) If the conveyance be to uses for preventing dower, instead of the words within inverted commas, say as under, Dower.

"The said (*purchaser*) and his heirs to, upon, and for the uses, trusts, intents, and purposes, and in the manner and form hereinbefore expressed, concerning the same."

(2) If the conveyance be to uses to prevent dower, instead of this covenant for quiet enjoyment, say,

"AND further, that all and singular the same hereditaments and premises, with their and every of their respective rights, members, privileges, appendants, and appurtenances, shall from time to time, and at all times hereafter, remain, continue, and be to the uses, upon the trusts, and for the intents and purposes hereinbefore declared or expressed, of or concerning the same, and shall and may be holden, occupied, and enjoyed, and the rents, issues, profits, and proceeds thereof, be received, retained, and applied accordingly, without any manner of hinderance," &c. *as in the text, next page* *.

PURCHASES.

*Undivided
Moiety, &c.*

Free from in-
cumbances.

the said (*purchaser*) his heirs and assigns, shall or lawfully may, immediately upon the sealing and delivery of these presents (1), and at all times thereafter, enter into and upon, and hold, possess, and enjoy, the said undivided moiety or half part, [of and in all and singular the same hereditaments and premises, with their and every of their respective rights, members, easements, appendants, and appurtenances], and receive and retain the rents, issues, profits, and proceeds thereof, to and for his and their own use and benefit, without any manner of hinderance *, interruption, disturbance, claim, or demand whatsoever, by or from the said (*vendor*) or his heirs, or any person or persons, now or hereafter claiming or possessing any estate, right, title, or interest, at law or in equity, in, to, out of, upon, or concerning the same, or any part thereof, from, through, under, or in trust for him or them (2), (other than persons entitled under or by virtue of any such leases or agreements for leases as aforesaid, so far as respects their respective estates or interests, under or by virtue of the same). AND that free and clear, and clearly, and absolutely discharged and exonerated, or by and at the expense of the said (*vendor*) his heirs, executors, or administrators, defended, protected, and indemnified, from and against all former and other [gifts, grants, bargains

Remainder, &c.

(1) If the conveyance be of a remainder or reversion, see No. XXIV.

(2) See *ante*, p. 390, n. (1).

and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate, right, and title, of or to dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, liens, and incumbrances whatsoever, which at any time or times heretofore or hereafter have been, or shall or may be made, created, executed, or knowingly occasioned, or suffered by the said (*vendor*) or his heirs (1), or any person or persons now or hereafter rightfully claiming or possessing any estate, right, title, or interest, at law or in equity, from, through, under, or in trust for him or them, or by or through his or their acts, deeds, defaults, consent, or privity, (save only in respect of such leases and agreements as aforesaid). AND moreover, that he the said (*vendor*) and his heirs, and all and every person and persons, now or at any time hereafter rightfully claiming or having title to claim any estate, right, title, charge, or interest, at law or in equity, in, to, out of, or respecting the said undivided moiety or half

PURCHASES.

*Undivided
Moiety, &c.*

Covenant for
further assurance.

(1) See *ante*, p. 390, n. (1).

PURCHASES.

*Undivided
Moiety, &c.*

part (1) hereby granted and released, or otherwise assured or intended so to be, [of and in the said hereditaments and premises, or any part thereof], from, through, under, or in trust for him or them (2), (other than persons claiming, or entitled under or by virtue of such leases or agreements for leases as aforesaid, so far as respects their respective estates or interests under or by virtue of the same) shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the costs and expense of the said (*purchaser*) his heirs or assigns, make, do, acknowledge, levy, suffer, execute, and perfect, [or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected], all and every such further and other lawful and reasonable acts, deeds, conveyances, matters, and things whatsoever, [whether by fine or fines, with or without proclamations, common recovery or common recoveries, deeds enrolled, the enrollment of these premises, feoffment, release, confirmation, declaration, or limitation, of or to any use or uses, or other assurance or assurances, of record or not of record] for the further, better, more perfectly, fully, and absolutely, or satisfactorily granting, releasing, conveying, confirming, and assuring the same moiety and premises, [and the possession, reversion, and inheritance thereof, with the rights, members, privileges, easements,

Remainder, &c.

(1) If the conveyance be of a remainder or the like, see No. XXIV.

(2) See *ante*, p. 390, n. (1).

appendants, and appurtenances thereto belonging], unto, “ and to, and for the use and behoof of the said (*purchaser*) his heirs and assigns (1),” in such manner and form as he the said (*purchaser*) his heirs or assigns, or his or their counsel in the law, (being of the degree of a barrister) shall advise and require, [and prepare and tender (if the nature thereof permit) for his or their signature and execution; so that such further assurance or assurances, or any of them, do not contain or imply, any further or other warranty or covenant, than against or on the part of the person or persons who shall be required to make or execute the same, his, her, or their devisors, ancestors, heirs, executors, or administrators, and his, her, or their own respective acts, deeds, omissions, or defaults; and so that the person or persons who shall be required to make or execute any such assurance or assurances, be not obliged to go from his, her, or their then place or respective places of abode, for the making or executing the same, without a reasonable and sufficient sum being previously paid or tendered

PURCHASES.

*Undivided
Mortgage, &c.*

(1) If the premises are limited to uses to prevent dower, instead of the words within inverted commas, say, Dower.

“ Unto the said (*purchaser*) and his heirs to the uses and for the ends and purposes aforesaid.”

If the title deeds are in the possession of the vendor, and he enter into a covenant for production of them, see *ante*, No. XVI. p. 196, but, if they be delivered over to the purchaser, such purchaser must covenant to produce them to the other co-tenants. This may be done by adding to the purchase deed Covenant to
produce title
deeds.

PURCHASES.

*Undivided
Moiety, &c.*

to him, her, or them, for or in respect of his, her, or their time, trouble, and expenses, which said acts, deeds, and assurances respectively, unless therein or thereby otherwise declared or intended, shall be and enure in confirmation of these presents, and of the estate or interest expressed to be hereby

as *ante*, p. 183—196.; but a separate instrument for the purpose will be a more proper mode, as, if it be contained in the deed itself, it will be in the hands of the covenantor.

The form in either case, so far as it differs from the covenant for production of title deeds by a vendor, will be as follows:

AND WHEREAS, it has been agreed that the title deeds relating to the entirety of the said (premises, and being in the possession and custody of the said (*vendor*)) shall be delivered over to the said (*purchaser*) on his entering into such covenant to produce and deliver copies thereof, unto the person or persons, who, for the time being, may be entitled to the other undivided moiety [or undivided two third parts respectively (*as the case may be*)] of the said premises. Now, &c. He the said (*purchaser*) for himself and his heirs, executors, administrators, and assigns, doth hereby covenant and declare with and to the said (*vendor*) his heirs, executors, and administrators, that he the said (*purchaser*) his heirs and assigns, shall and will from time to time, and at all or any time or times, when thereunto lawfully required by any person or persons, who, for the time being, shall or may be legally or equitably seized, possessed of or intitled to the remaining moiety or half part [or other or remaining two third parts respectively, or any or either of them] (*as the case may be*), or any part or parcel thereof, produce and show forth, or cause and procure to be produced and shown forth to him, her, or them, or any or either of them, or to his, her, their, or any or either of the counsel, &c. &c., as *ante*, p. 196.

granted and released, or otherwise assured (1). PURCHASES.
IN WITNESS, &c.

*Undivided
Moiety, &c.*

(1) See various provisoes, &c. adapted to different circumstances of title or the agreement of parties, to be inserted when requisite, *ante*, No. II. p. 29, also No. XVI. (*ante*, p. 160, and p. 188, *et seq.*)

* * As to mode of execution and attestation in respect of consideration money, &c. see *ante*, No. XVI. p. 184, in notes. Execution, &c.

As to the stamp, see *ante*, end of INTRODUCTION. Stamp.

If the entirety of the premises are subject to a ground rent, see *post*, end of No. XXVII. Ground rent.

PURCHASES.

*Undivided
Moiety, &c.*

(A) *Variation where part of the purchase money is retained by the purchaser on account of the minority of either of the vendors, see ante, p. 383.*

If either of the persons entitled to an undivided part of the premises sold, or to a part of the purchase money, be a minor, and the purchaser is willing to complete his purchase notwithstanding this circumstance, upon being permitted to retain the claimant's portion of the money in his hands, a declaration of trust should be executed by the purchaser on a separate instrument, to remain in the hands of the vendor or other person on the part of the minor ; but as such trusts, to save expense, and from a full confidence subsisting between the parties, are often included in the purchase deed, I shall here insert a form adapted to the case which most usually occurs, i. e. the minor being entitled to a part of the purchase money, without having any legal estate in the premises sold.

After reciting the title and minority of the infant, proceed,

“ AND WHEREAS the said (*vendor*) is entitled to one-fourth part of the said purchase money, or sum of £ but by reason of his being under the age of twenty-one years, cannot at present execute an effectual release or discharge for the same, it has been agreed that the said sum shall be retained by the said (*purchaser*) out of his said purchase money, upon his entering into a bond or obligation for securing the payment thereof, with interest, at the times, and in the manner hereinafter mentioned, and the said (*purchaser*) by his bond or covenant in writing, bearing even date with these presents, has accordingly become bound to the said (*vendor*) in the penalty of £ with a condition thereunder written, for making void the same, on payment by the said (*purchaser*) his heirs, executors, or administrators, of the sum of £ being one equal fifth part (*or as the case may be*) of the said sum of £ , and interest for the same after the rate of £ per cent. per annum, on the day of next ensuing the date thereof, and in the

meantime stand possessed thereof, upon the trusts and for the **PURCHASES.**
 intents and purposes, and subject to the provisions and
 agreements declared or expressed, concerning the same, Undivided
 in and by a certain indenture intended to bear even date Moiety, &c.
 therewith, and to be made between the said (*vendor*) of the **WITNESS.**
 one part, and the said (*purchaser*) of the other part, (re-
 ferring to and (meaning this present indenture): Now
 THIS INDENTURE FURTHER WITNESSETH, that in considera-
 tion of the premises, and in pursuance of the said agreement
 in that behalf, it is hereby declared and agreed, by and be-
 tween the said parties to these presents, and particularly
 by the said (*purchaser*) that he the said (*purchaser*) his exe-
 cutors, administrators, and assigns, shall and will stand pos-
 sessed of and interested in the said sum of £
 and the interest thereof, so retained by him as aforesaid, upon
 the trusts for the intents and purposes, and subject to the
 provisoes and agreements following (that is to say), in trust
 for the said (*minor*) until he shall attain the age of twenty-
 one years, or shall depart this life under that age, or on
 his attaining that age, shall neglect or refuse to execute
 such deed or deeds as shall be necessary or expedient
 for effectually releasing and discharging the said premises,
 and the said (*purchaser*) his heirs and assigns, and the
 several tenants, proprietors, and occupiers thereof, of, and
 from the payment of the said sum of £, to which
 the said (*minor*) is entitled as aforesaid, and of, from, and
 against all claims and demands in respect of the same, upon
 tender being made by the said (*purchaser*) his heirs or as-
 signs, unto him the said (*minor*) of such deed or deeds for exe-
 cution, and of the said sum of £ and of the interest
 accrued due thereon; and in case the said (*minor*) shall
 attain his age of twenty-one years, and shall execute such
 deed or deeds as aforesaid, then upon trust to pay the said
 sum of £, and all interest accrued due in respect
 of the same, to the said (*minor*) his executors, admini-
 strators, or assigns, for his or their own use and benefit;
 and in case the said (*minor*) shall depart this life under
 the age of twenty-one years, then that he the said (*purchaser*) his executors, administrators, and assigns, shall

PURCHASES. stand possessed of and interested in the said sum of £
Individed
Moiety, &c. , and all interest accrued due, and to become payable in respect of the same, in trust for such person or persons as shall be entitled thereto, under, or by virtue of the said will of the said (*testator*) deceased, (*or as the case may be.*) PROVIDED NEVERTHELESS, and it is hereby declared and agreed, by and between the said parties to these presents, that in case the said (*minor*) shall attain his age of twenty-one years, and shall for the space of six calendar months then next ensuing, neglect or refuse to execute, or join in executing such deed or deeds of release and discharge as hereinbefore is mentioned, then and in such case it shall be lawful to and for the said (*purchaser*) his heirs, executors, and administrators, to retain the sum of £ , part of the said sum of £ , without being afterwards answerable for or obliged to pay any interest for or in respect of the same, in order to indemnify him the said (*purchaser*) his heirs, executors, administrators, and assigns, of and from the payment of the same sum of £ , and all claims and demands in respect of the same (*or otherwise, as the justice of the case or agreement of the parties may require*) the said hereinbefore recited bond or obligation, or any thing therein contained to the contrary thereof, in anywise notwithstanding (1). IN WITNESS, &c.

Further sum to be paid on minor's executing.

(1) If it be agreed that the purchaser shall pay an increase of price for the premises upon such of the parties interested as are minors executing conveyances of their parts of the estate, a covenant for his doing so may be inserted here, see *ante*, No. II. p. 29, n. (16).

Relinquishment of purchase on minor's not executing.

Or if on non-execution by such minors he is to be at liberty to vacate the purchase, see *ib.* n. (17).

PURCHASES.

*Vendor and
Termor to
Purchaser.*

No. XXVII.

*Conveyance by a Vendor to a Purchaser where the
Title is subject to an Outstanding Term.*

*The Term to be assigned to attend the Inheritance by
the same Deed (1).*

Variations where it is surrendered to merge.

Where there are two or more Outstanding Terms.

Where the Premises are part of Lands, &c. sold in Lots.

*Where the Purchaser takes to Uses to prevent Dower,
&c. &c. as in margin below.*

THIS INDENTURE of parts, made the
day of in the year of the reign, &c.

(1) Although outstanding terms are frequently assigned to attend the inheritance in the same deed by which such inheritance is conveyed (wherefore a form for this purpose is here given) yet the most convenient and proper mode in general is to assign the term by a separate instrument, by which means an ejectment may be maintained by the trustee without the necessity of his exhibiting his title to the inheritance; or the purchaser may himself support an ejectment in the absence of the trustee, provided care be taken not to let it appear on the face of the conveyance that the legal estate is vested in a termor; but "if the purchaser should have occasion to bring an ejectment against a tenant, &c. and the term be assigned to trustee for him by his purchase deed, and no count in the declaration on a demise by such trustee, the purchaser could not recover the possession, as it would appear on the face of his own deed, that the ejectment

Term should be
assigned by
separate deed.

PURCHASES. and in the year of our Lord , BETWEEN (*the*
vendor) of, &c. of the first part, (*the termor*)

*Vendor and
Termor to
Purchaser.*

was not brought by the person who had the first estate in possession;" and see 2 Bridg. Conv. 392; also Doe v. Sybourn, 7 Durnf. and E. 2, Goodtitle v. Jones, *ib.* 47, Evans v. Bicknell, 6 Ves. jun. 174, 184. Doe v. Wroot, 5 East, 132.

For the form of such an assignment, see WILDE's Sup. No. XXX. p. 240.

What term
should be assigned.

An assignment of outstanding terms to attend the inheritance is required for the purpose of obtaining the legal estate during the term, in order to protect the purchaser against intermediate incumbrances of which he has no notice, and also against dower; such terms only, therefore, need be so assigned as the purchaser can avail himself of in ejectment, see Co. Lit. 290, b. n. (2), s. 13, but all other terms which are outstanding, should likewise be gotten in and merged at the time of the purchase, lest they should afterwards be required by a future purchaser or mortgagee, when the purchaser may be obliged to obtain them at his own expense; and see more fully on this subject the observations, *post*, p. 430.

Several terms.

Where there are several trust terms, it will generally be proper to merge them all except the two oldest, unless the deeds by which such elder terms were created or assigned be lost, in which case it may be eligible to preserve a more modern one; and vide Brad. P. Bk. 60; where the state of the title renders it proper that more terms than one should be kept on foot, they may all be assigned, or rather demised, to the same trustee, reserving one day of the whole residue of each term, in order to prevent their merging in each other, "or every alternate term, as the first, third, and fifth, may be assigned to one trustee, and the second, fourth, and sixth to another trustee." 2 Prest. Conv. 127, 129, and see Scott v. Fenhoulet, 1 Brow. Ch. Rep. 69.

It sometimes happens that where there are several terms, the one of them is found to have been carved out of the other, in which case the latter or under term is that which it is more requisite should be assigned to attend, as it is this and not the original term which confers on the lessee the immediate right of possession, vide 2 Prest. Conv. 130; and for the forms of such assignments see *post*, INDEX *voce* TERMS.

of, &c. of the second part (1), (*the purchaser*) PURCHASES.
of, &c. of the third part (2), and (*the purchaser's trustee*) of, &c. of the fourth part (3).
WHEREAS the said (*vendor*) is seised to him and his heirs in fee-simple in possession of the messuages, lands, and hereditaments hereinafter described, (save only with respect to a term of five hundred years now outstanding therein, and hereinafter more particularly mentioned). AND WHEREAS (4), &c. AND WHEREAS the said (*purchaser*) hath contracted (5) with the said (*vendor*) for the absolute purchase of the said premises for the sum of £ free from incumbrances, (ex-

Vendor and
Termor to
Purchaser.

- (1) If the vendor be *tenant in tail*, see *ante*, No. XXII. Tail:
If tenant for *life*, see *ib.* No. XXIII. Life.
If he be entitled in *remainder* or *reversion*, see *ib.* No. XXIV. Reversion.
If the conveyance be of an *equity of redemption* only, see *ib.* Equity of re-
No. XXV. demption.
If of a *moiety* or other *undivided part*, see *ib.* No. XXVI. Moiety, &c.
(2) If the vendor be married, and his wife be entitled to Wife.
dower, make her a party with her husband, as *post*, Vol. II.
No. XXXI.
If the vendor took the estate with limitations to a trustee to prevent dower, make such trustee a party of the *second* part, as *ibid.* No. XXXIV.
If the purchaser be married, and his wife dowable, make a Dower.
trustee, as ("a trustee named and appointed by and on behalf of the said (*purchaser*) for the purposes hereinafter mentioned") of the third part, as in *post*, No. XXVIII.
(3) If the term be intended to be merged, the trustee of the Term assigned
fourth part will of course be omitted. to merge.
(4) Recite here any other deeds which it may be deemed Recitals.
necessary to notice. For forms of recitals of different kinds of deeds, &c. see INDEX, *voce* RECITALS, and see *ante*, p. 123.
(5) If the estate were sold by public auction or otherwise Auction, &c.
than by private contract, see *ante*, p. 163, n. (4).

PURCHASES.

*Vendor and
Termor to
Purchaser.*

WITNESS, that
in consideration
of the purchase
money.

cept as hereinafter is mentioned (1). AND has requested, that the same may be conveyed to him and his heirs, and the said term of five hundred years may be assigned to the said (*purchaser's trustee*) in trust to attend the reversion of the said premises (*or merged as the case may be*) in the manner hereinafter expressed (2). Now THIS INDENTURE WITNESSETH (3), that in pursuance of the said agreement, and in consideration of the sum of £ (4) of lawful money of that part of the United Kingdom of Great Britain and Ireland, called England, in hand well and truly paid to the said (*vendor*) by the said (*purchaser*) at or before the sealing and delivery of these presents, the receipt whereof the said (*vendor*) doth hereby acknowledge, [and of and from the same doth acquit, release, discharge, and exonerate the said

Dower.

(1) If the estate be intended to be limited to uses for preventing dower, say,

“And has requested that the same may be conveyed to him to the uses and in the manner hereinafter expressed.”

Copyhold.

If part of the premises are copyhold, see *ante*, No. XVIII.

(2) If the term is intended to be merged, say,

Term to merge.

“And that the said term of _____ years may be surrendered and merged in the reversion thereof, as hereinafter is expressed.”

Construction,
&c.

(3) For the construction and reason of the different parts of the deed upon which no remarks are subjoined, see the notes in No. XV. p. 122, *et seq.*

Consideration.

(4) If the consideration be paid otherwise than in money, or at any other time than at the execution of the conveyance, see No. XVI. p. 165, n. (6), *et seq.*

Vendor taking
to prevent
dower.

If the vendor took the estate to uses to prevent dower, insert here the witnessing part of Vol. II. No. XXXIV.

(*purchaser*) his heirs, executors, and administrators, and also the said hereditaments by these presents]. He the said (*vendor*) HATH granted, bargained, sold, aliened, and released, and by these presents BOTH grant, bargain, sell, alien, release, and confirm (1) unto the said (*purchaser*) and his heirs, ALL (†); &c. or howsoever other-

PURCHASES.

*Vendor and
Termor to
Purchaser.*

The vendor
grants, &c.

Parcels.

(1) If the term is intended to be merged, it may be surrendered at the end of the deed, as *post*, or if it be wished that the deed should be as short as possible, add:

Term to merge,
short form.

“ And the said (*termor*) with and by the privity and direction of the said (*vendor*), testified by his signing and sealing these presents, HATH bargained, sold, assigned, surrendered, and yielded up, and by these presents doth bargain, sell, assign, surrender, and yield up unto,” &c. *as above*.

Which mode will have the same effect of merging the term, as if surrendered by a separate witnessing part of the deed, the merger being affected simply by the union of the particular estate with the reversion.

(†) The parcels should be accurately described, and the names of the inclosures and the quantities they contain, in the following words or some such manner, viz.

Parcels.

“ All that messuage or tenement situated in the township or parish of, &c. in the said county of, &c. with the barns, &c. to the same adjoining and belonging, and now in the occupation of, &c. as tenant thereof to or under the said (*the vendor*). And also all those several closes and parcels of ground situate in the said parish of, &c. to the said messuage, &c. belonging, or therewith occupied or enjoyed, commonly called or known by the several names, and containing by estimation the respective quantities hereinafter mentioned, (that is to say) East Field, containing, &c. &c. &c. all which said several closes or parcels of ground are now also in the occupation of the said as tenant to or under the said (*the vendor*), together with all and singular houses, &c. &c.”

PURCHASES. wise the said messuages, lands, tenements, and hereditaments, or any of them, now are, or is, or heretofore were or was situated, tenanted, called, known, described, or distinguished, and also all other the messuages, lands, tenements, and hereditaments (if any) which are described or comprised in a certain indenture of bargain and sale for a year, hereinafter referred to. **TOGETHER** with all [houses (1), out-houses, buildings, barns,

*Vendor and
Tenant to
Purchaser.*

If the boundaries can be added, it is advisable to insert them, making use of the names of the owners rather than the occupiers of the adjoining lands, but the names of both may be useful, and if one inclosure has been divided into two or more, it should be noticed; for little attention is in general paid to the parcels, antiquated descriptions of which, wholly inapplicable to the estate at the time of the conveyance, are frequently continued, when a new description ought to be introduced.

If the parties will not agree to convey by an entire new description from an apprehension that they may pass too much, it may be qualified and restrained by some such words as the following: "all which said premises were formerly known and conveyed by the following description," (i. e.) then insert the ancient description.

Tithes.

If the lands to be conveyed be not exempted from the payment of tithes by modus or otherwise, but the tithes belong to the owner of the soil, they should be conveyed with the land, as,

"And also all tithes and tenths of corn, &c. &c. from time to time growing, arising, or otherwise accruing upon or out of the said lands and hereditaments or any part of the same."

Moiety, &c.

If the conveyance be of a moiety or other portion of the estate, see *ante*, No. XXVI.

Remainder, &c.

If of a remainder or reversion, see *ante*, No. XXIV.

General words.

(1) For general words applicable to different kinds of real property,—See **INDEX, voce GENERAL WORDS.**

stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards, waters, lands covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common of every kind, and all] and all manner of [other] rights, privileges, easements, advantages, appendants, and appurtenances whatsoever, to the said messuages, lands, tenements, hereditaments, and premises, or any of them, or any part thereof respectively, belonging [or in anywise appertaining, or reputed or deemed so to be, or with the same or any part thereof now or heretofore holden, used, occupied, or enjoyed], except, &c. (*here insert any exception of a right of way or the like, if any*). (ALL which said messuages, lands, tenements, and hereditaments are now in the actual possession (1) of, or legally vested in the said (*purchaser*) by virtue of a bargain and sale for a year, to him thereof made by the said (*vendor*) (for five shillings consideration), by indenture bearing date on the day next before, [and executed previously to] the sealing and delivery of these presents, for the term of one year, [commencing from the day next preceding the date of the same indenture (2)] and by force of the statute

PURCHASES.

*Vendor and
Termor to
Purchaser.*

Reference to
the bargain
and sale for
a year.

(1) If the conveyance be of a moiety or other portion only of the estate, see *ante*, No. XXVI. Moiety, &c.

If of a remainder or reversion, see No. XXIV. Remainder, &c.

(2) See the form of this bargain and sale, *ante*, No. XIII. Bargain and sale.
p. 110, and No. XIV. p. 117.

PURCHASES.

*Vendor and
Termor to
Purchaser.*

Grant of title
deeds.

made for transferring uses into possession) [and the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises], and the rents, issues, profits, and proceeds, to arise or become payable for or in respect of the same. AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity, of him the said (*vendor*) in, to, out of, upon, or respecting the said hereditaments and premises, or any part thereof: [TOGETHER with all deeds, muniments, writings, and evidences whatsoever, which in anywise relate to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, and which now are (1) or hereafter shall or may be in the possession or lawful power of the said (*vendor*) or his heirs, or any other person or persons from whom he or they can or may procure the same, without action or suit at law or in equity; and true and attested copies, (duly stamped), when and as the said (*purchaser*) his heirs or assigns shall require the same (2), of all other deeds, muniments, writings, and evi-

Remainder, &c.

(1) If the conveyance be of a remainder or reversion, see *ante*, No. XXIV.

Schedule.

(2) If the title deeds are not to be delivered to the purchaser, but a covenant entered into for the production of them, as contained in an underwritten schedule, add,

“Whether mentioned in the schedule here underwritten or not.”

dences, (not being of record) so in his or their custody or power as aforesaid, which in anywise relate to the same hereditaments and premises, or any part thereof, jointly with other hereditaments or property of equal or greater value, such copies, when first required, to be made and delivered at the expense of the said (*vendor*) his heirs, executors, or administrators; but all future copies to be made and taken at the expense of the person or persons requiring the same,] **TO HAVE AND TO HOLD** the said (1) messuages, lands, tenements, hereditaments, and other the premises, hereinbefore and in the said indenture of bargain and sale described, and hereby granted and released, or otherwise assured, or intended so to be, with their and every of their rights, members, appendants, and appurtenances, unto the said (*purchaser*) and his heirs, to and for the only proper use and behoof of him the said (*purchaser*) his heirs and assigns for ever (†). **AND** the said (*vendor*) for himself,

PURCHASES.

*Vendor and
Termor to
Purchaser.*

To **HOLD** to
the purchaser
in fee-simple.

Covenant by
vendor that he
is seised in fee.

(1) If the conveyance be of a moiety or other portion of the estate, see *ante*, No. XXVI. **Moiety, &c.**

If of a remainder or reversion, see No. XXIV. **Remainder, &c.**

(†) If the conveyance be intended to be made to uses for preventing dower, insert the limitation given, *post*, No. XXVIII. **Dower.**

If an estate be sold in parcels, the conveyance may be made to a trustee as to different lots (describing them), to the use of the purchasers under distinct limitations, and there may be a separate set of covenants with each purchaser as to the lands limited to him, or there may be one set of covenants with the trustee to uses. **Estate sold in lots.**

And if the term attendant on the inheritance, comprises the whole estate, it may be assigned to one trustee for all the

PURCHASERS. his heirs, executors, and administrators, DOTH
 hereby covenant, and declare, with and to the
 said (*purchaser*) his heirs and assigns(†), in the

*Vendor and
 Termor to
 Purchaser.*

purchasers, "as to so much and such part of the messuages, &c. hereinbefore mentioned to be hereby assigned, as are hereinbefore limited to the use of the said A. B. his heirs and assigns, in trust for the said A. B. his heirs and assigns, and to be disposed of," &c.

If an assignment of the term in each lot to separate purchasers be preferred, it may be done by assigning "so much and such part of the said messuages, &c. comprised in the term, as are hereinbefore limited to the use of the said A. B., his heirs, and assigns, unto," &c.

If the term in each lot is to be surrendered, the termor must "assign, surrender, and yield up so much and such part of the said messuages, &c. hereinbefore mentioned, to be hereby released, or so much and such part of the messuages, &c. comprised in the term, as are hereinbefore limited, to the use of the purchaser, his heirs, and assigns, for ever as aforesaid; and all the estate, &c. habendum, to the purchaser, his heirs, and assigns, for the residue of the term, and for and during all other the estate, &c. of the trustee, to the intent, that the "now residue of the term may be merged and extinguished in the reversion, freehold, and inheritance of the same premises." From this it will appear that a term may be merged by a surrender to cestuique use. It has been objected as absurd in the surrender of a term, and it may appear so at first sight, to make the habendum to the owner of the fee, *for and during the residue of the term*, these words importing the continuance of an interest which is meant to be extinguished; but the fact is, they are only meant to express that the termor surrendered his *whole* interest, and not a part of it only.

Copyhold.

If any part of the lands be copyhold, a covenant to surrender them may properly be introduced here.—See the form of such covenant, *ante*, No. XVIII. p. 257.

Usual covenants.

(†) The usual covenants are, that notwithstanding any act, &c. done by the vendor, or those under whom he claims, he is lawfully seised and has power to convey, that the premises are free from incumbrances, and that he will make further assurance,

manner following (1) (that is to say) that for **PURCHASERS.**
 and notwithstanding any act, deed, matter, or
 thing whatsoever, at any time heretofore made,
 done, executed, or knowingly occasioned, suf-
 fered, or omitted, by him the said (*vendor*) (2)
 to the contrary, (except as hereinafter is ex-
 cepted) he the said (*vendor*) at the time of the
 sealing and delivery of these presents, is law-
 fully, rightly, and absolutely seised (†) in his

*Vendor and
 Tenant to
 Purchaser.*

but all these refer to his own acts only, if he has purchased the estate; or to his acts, and the acts of those under whom he claims, if the premises have come to him by descent, devise, or settlement, for it seems to be now sufficiently ascertained, that the vendor is not obliged to enter into general covenants against all the world, and for this reason, that the covenants of all former owners run with the land, and may be taken advantage of by the purchaser, in case of a claim made by or through any of them.

(1) If the conveyance be to uses for preventing dower, see **Dower.**
post, No. XXVIII.

If the conveyance be of a moiety or other portion of the **Moiety, &c.**
 estate, see covenants *ante*, No. XXVI.

If of a remainder or reversion, see *ante*, No. XXIV. **Remainder, &c.**

If a part of the land be copyhold, make such additions to this **Copyhold.**
 and the subsequent covenants as will be found in those of
 No. XVIII.

(2) If the vendor became entitled to the estate by devise, **Vendor taking**
 add, **by devise,**

“Or the said (*devisor*) deceased.”

If by descent, add,

or descent.

“Or any of his ancestors,” and see *ante*, No. XV. p.
 141. n. (39); and No. XVI. p. 178. *et seq.* in notes.

(†) As to the construction of the usual covenants for the title, **Construction**
viz. the Covenant by the vendor, that for any thing done by him **of covenants.**
 or his ancestors, he is seised in fee, and has a right to convey;
 that the purchaser shall quietly enjoy against the vendor, and

PURCHASES. demesne as of fee, in his own right, and to his own use, of, in, and to all and singular the mes-

*Vendor and
Terror to
Purchaser.*

all claiming under him or his ancestors, or by their acts or default; and that all persons so claiming, will execute further assurance at the request and expense of the purchaser, it is to be observed, that all these covenants run with the land, and the benefit of them consequently may be had by all future assignees, whether legal or beneficial. *Midlemore v. Goodall*, 1 Roll. Ab. 521. *Derisley v. Custance*, 4 Durn. and E. 75. *Spencer v. Boys*, 4 Ves. 370. The two first covenants being of the same nature, the preliminary words confining the covenant of seisin to the acts of the vendor and his ancestors, they are held to extend to that immediately following, that he has a right to convey. *Gainsford v. Griffith*, 1 Saund. 58. *Browning v. Wright*, 2 Bos. & Pul. 13; but not to the subsequent covenants, which are of a different nature—and *vid. Fearn*, P. Wks. 110.

The covenant for quiet enjoyment, however unlimitedly framed, is held to extend to eviction or disturbance only by persons having an interest in the premises, and not to a tortious disturbance by persons having no right. *Noble v. Smith*, 1 Hen. Blac. 34. *Dudley v. Folliot*, 3 Durn. and E. 584; (but see *Montford v. Catesby*, Dy. 328. a. contra), unless the covenant be expressly and pointedly worded to that effect, *Foster v. Mapes*, Cro. Eliz. 212. Hob. 35; because if a purchaser be tortiously evicted, he has his remedy against the evictor; and “if the covenant were to be construed to extend to tortious evictions, a way might be open for secret practices and combinations, between purchasers and strangers, in order to recover damages against the vendor.” *Vid. 2 Saund. Rep.* 178. a. n. 8. 181. a. n. 10. Upon the breach of any of the above covenants, the covenantee may maintain an action against the covenantor for the amount of his purchase money in case of eviction, or for damages, as the case may require; or to supply any remediable defect in the title at his own expense. And all persons having the beneficial ownership of the premises, are bound to enter into these usual covenants for the title, as also according to the common practice, the person entitled as devisee or otherwise, to the money arising from the sale of the estate, as the person entitled to the produce of the estate, is to be considered as the beneficial owner of the estate

suages, or tenements, lands, hereditaments, and premises hereinbefore granted and released, or otherwise assured, or intended so to be, as of, in, and for a good, perfect, clear, absolute, and indefeasible estate of inheritance, in fee-simple in possession, and in severalty, without the said estate or premises being subject or liable to any manner of trust, condition, qualification, restriction, matter, or thing whatsoever, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever, (the aforesaid term of years, for the now residue thereof, and subsisting leases, or agreements for leases, of which the said (*purchaser*) hath notice, only excepted. AND also that [for and notwithstanding any such act, deed, matter, or thing, as aforesaid,] he the said

PURCHASES.

*Vendor and
Termor to
Purchaser.*

And hath right
to convey.

itself. *Lloyd v. Griffith*, 3 Atk. 336; but in the case of the *Duchess of Rutland v. Wakeman*, 3 Ves. 233. 504. a purchaser of trustees was decreed to complete his purchase without covenants for the title from the persons entitled to the purchase money, and the decree was affirmed by the House of Lords. 8 Brow. P. C. 145.

As to persons claiming under the vendor, see *Butler v. Swinerton*, Palm. 339. *Hurd v. Fletcher*, 1 Dougl. 43.—and as to the default of the vendor, see *Flowers v. Brushfield*, 3 East. 491. A covenant is also frequently inserted in conveyances for producing title deeds retained by the vendor on account of their relating to other premises of greater value not sold, which is also considered to be a covenant of a real nature, and therefore to run with the land. *Fearn. P. Wks.* 114. *Napper v. Allington*, 1 Ab. Eq. 166.

A further covenant often inserted in conveyances is by the husband, that his wife when interested or entitled to dower in the estate, shall levy a fine to part with such interest.

PURCHASES.

*Vendor and
Terror to
Purchaser.*

That the purchaser shall
quietly enjoy.

(*vendor*) now hath in himself, full power, and lawful and absolute right and title to grant, bargain, sell, release, and confirm, all and singular the said hereditaments and premises, and the possession, reversion, and inheritance thereof, unto (1) and to the use and behoof of the said (*purchaser*) his heirs and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents. AND further, that he the said (*purchaser*) his heirs and assigns, shall or lawfully may, immediately upon the sealing and delivery of these presents, and at all times thereafter, enter into and upon, and hold, possess, and enjoy all and singular the same hereditaments and premises, with their and every of their respective rights, privileges, appendants, and appurtenances, and receive and retain the rents, issues, profits, and proceeds, which shall arise or be payable for or in respect of the same, to and for his and their own use and benefits], “And (2) also for the said (*trustee*) his executors, administrators, and as-

Dower.

(1) If the conveyance be to uses for preventing dower, instead of what is included within brackets, say,

“Unto the said (*purchaser*) and his heirs, to, upon, and for the uses, ends, and purposes aforesaid, and according to the true intent and meaning of these premises, and that all and singular the said hereditaments and premises, with the appurtenances, shall and may be, and remain and be holden and enjoyed, to, for, and upon the same uses, trusts, and purposes, and the rents, issues, and profits thereof be received, taken, and applied accordingly.”

Term surrendered.

(2) If the term be surrendered to merge, omit the clause within inverted commas.

signs, to have, hold, possess, and enjoy the same premises for the residue now to come of the said term of years, hereinafter to him assigned, as hereinafter mentioned, upon, and for the trusts, intents, and purposes hereinafter expressed concerning the same," according to the true intent and meaning of these presents, without any manner of hindrance, interruption, disturbance, claim, or demand whatsoever, by or from the said (*vendor*) or his heirs, or any person or persons now or hereafter lawfully or rightfully claiming or possessing any estate, right, title, charge, or interest at law or in equity, in, to, out of, upon, or concerning the same, or any part thereof, from, through, under, or in trust for him, them, or any of them. AND that free and clear, and clearly and absolutely discharged and exonerated, or otherwise by and at the expense of the said (*vendor*) his heirs, executors, or administrators, effectually defended, protected, and indemnified from, and against all former and other [gifts, grants, bargains and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate, right and title of or to dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular

PURCHASES.

*Vendor and
Termor to
Purchaser.*

Free from in-
cumbances.

PURCHASES.

*Vendor and
Tennor to
Purchaser.*

Covenant for
further as-
surance.

other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore or hereafter have been, or shall or may be made, created, executed, committed, or knowingly occasioned, or suffered by the said (*vendor*) or his heirs (1), or any person or persons now or hereafter rightfully claiming or possessing any estate, right, title, or interest, either at law or in equity, from, through, under or in trust for him, them, or any of them, or with or by his, their, or any of their procurement or privity; such leases or agreements as aforesaid, only excepted. AND moreover, that he the said (*vendor*) and his heirs, and all and every person or persons now or at any time hereafter rightfully claiming or possessing any estate, right, title, charge, or interest at law or in equity, in, to, out of, upon, or respecting the hereditaments and premises hereby granted and released, or otherwise assured, or intended so to be, or any part thereof, from, through, under, or in trust for him, them, or any or either of them, [other than persons claiming or entitled under or by virtue of such leases, or agreements for leases as aforesaid, so far as respects their respective estates or interests under or by virtue of the same] shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the costs and expense of the said (*purchaser*) his heirs or assigns, make,

Vendor taking
by devise, &c.

(1) If the vendor took by devise or descent, see *ante*, p. 411, n. (2).

do, acknowledge, levy, suffer, execute, and perfect, [or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected with all proper despatch], all and every such further and other lawful and reasonable acts, deeds, conveyances, matters, and things whatsoever, [whether by fine or fines, with or without proclamations, common recovery or common recoveries, deed or deeds enrolled, feoffment, release, confirmation, declaration, or limitation of or to any use or uses, or other assurance or assurances, of record or not of record], for the further, better, more perfectly, and absolutely or satisfactorily granting, releasing, conveying, confirming, and assuring the same, and every or any part or parcel thereof, and the possession, reversion, and inheritance thereof, with their and every of their respective rights, members, appendants, and appurtenances, unto “ and to and for the use, and behoof of the said (*purchaser*) his heirs and assigns, free from incumbrances as aforesaid (1), and also for the further, better, and more perfectly or satisfactorily assigning the said term of years unto the said (*trustee*) his executors, administrators, and assigns, upon and for the trusts, intents, and purposes hereinafter expressed ;” in the manner aforesaid, or otherwise,

PURCHASES.

*Vendor and
Termor to
Purchaser.*

(1) If the premises are to be limited to uses to prevent dower, Dower. instead of the words within apostrophes, say,

“Unto the said (*purchaser*) and his heirs, to, for, and upon the uses, trusts, and purposes hereinbefore expressed concerning the same.”

PURCHASES.

*Vendor and
Tennor to
Purchaser.*

Recital of out-
standing term.

as he the said (*purchaser*) his heirs or assigns, or his or their counsel in the law, (being of the degree of a barrister) shall advise and require, [and prepare and tender (if the nature thereof permit) for his or their signature and execution; so that such further assurance or assurances, do not contain or imply any further or other warranty or covenant, than against or on the part of the person or persons who shall be required to make or execute the same, his, her, or their devisors, ancestors, heirs, executors, and administrators, and his, her, or their own respective acts, deeds, omissions, or defaults; and so that the person or persons who shall be required to make or execute any such assurance or assurances, be not obliged to go from his, her, or their then place or respective places of abode, for the making or executing the same, without a reasonable and sufficient sum being previously paid, tendered, or secured to him, her, or them, for or in respect of his, her, or their time, trouble, and expenses.] *Where the assignment of the term is by the same deed, add,* AND WHEREAS, by indenture bearing date on or about the day of , which was in the year and made or expressed to be made between, &c. (*the several parties*) the messuages and hereditaments hereinbefore described, and released or otherwise assured, were demised unto for the term of five hundred years, thence next ensuing, for certain purposes therein expressed, and which have now long since been fully per-

formed, or otherwise satisfied. AND WHEREAS, PURCHASES.
 by divers mesne assignments (1) and other acts in
 the law, and particularly by an indenture bearing
 date on or about the day of which was in
 the year , and made or expressed to be made
 between, &c. (*the last assigner*) of the one part,
 and the said (*termor*) of the other part, the said
 hereditaments were assigned unto, or otherwise
 became vested in the said (*termor*) for the then re-
 sidue of the said term discharged of the said trusts.
 AND WHEREAS the said (*purchaser*) has requested
 that the residue now to come of the said term of
 five hundred years, in the said lands and heredita-

*Vendor and
Termor to
Purchaser.*

(1) It has been recommended by very able conveyancers, that in an assignment of a term from an old trustee to a new trustee to attend the inheritance, or to a purchaser, to merge, that not only the deed by which the term was created, but all the intermediate assignments and other acts by which it was transmitted forwards to the trustee required to assign should be recited, and also all conveyances of or assurances affecting the reversion and inheritance of the premises comprised in the term: and this plan is frequently adopted in practice; the reason given for which is, that the termor may, by the recital of such assurances, possess certain evidences of the deduction of the fee into the person directing the assignment of the term, and thence be safe in making the assignment required. But will not the opinion and advice of his counsel, recommending and approving the assignment on his behalf, furnish him with equal security with a deduction of the title in the deed of assignment, with the accuracy or effect of which deduction, he must in every case, without the advice of his counsel, be as ignorant as if none had been made? This practice should therefore be discontinued, as burdening the vendor oftentimes with an enormous expense, without adding at all to the security of the termor, and see Sugd. Vend. and Pur. 380.

What recitals
sufficient.

PURCHASES. ments, may be assigned to the said (*trustee*) upon
 and for the trusts, intents, and purposes herein-
 after expressed concerning the same (1). Now THIS
 INDENTURE FURTHER WITNESSETH, that (2) in pur-
 suance of the said request, and in consideration
 of the sum of 10s. of lawful and current money
 of England, in hand well and truly paid to the
 said (*termor*) by the said (*trustee*) (3) at or im-
 mediately before the sealing and delivery of these
 presents, the receipt whereof is hereby acknow-
 ledged: He the said (*termor*) by the direction
 and appointment of the said (*vendor*), “and at the
 nomination of the said (*purchaser*) (4)”, testified

*Vendor and
Termor to
Purchaser.*

**FURTHER
WITNESS.**

Termor assigns.

Term to merge.

(1) If the term be intended to be merged, say,

“Is desirous that the said term may be merged in the reversion and inheritance of the said premises so now vested in him as aforesaid.”

*Where term not
assigned.*

(2) If the purchaser be satisfied with the present trustee of the term, omit what follows to the words, IN TRUST, *post*, p. 423, and say,

“That it is hereby declared and agreed, by and between the several parties hereto, that the said term of five hundred years so assigned to and now vested in him the said (*termor*) as aforesaid, shall henceforth remain, continue, and be in him the said (*termor*), his executors, administrators, and assigns, IN TRUST, &c.”

Proceed as in p. 423, margin; and in this case it will be better that such continuing termor should be a party to the deed, for the purpose of joining in the declaration of the trusts of the term, and *vide* Co. Litt. 290, b. n. (1), also, 3 Prest. Abstr. 277.

Term to merge.

(3) If the term is to be surrendered to merge, say,

“Paid by the said (*purchaser*).”

(4) If the term be merged, omit the words within inverted commas.

by his being a party to and sealing and delivering these presents, HATH (1) bargained, sold, assigned, transferred, and set over, and by these presents DOTH bargain, sell, assign, transfer, and set over; AND the said (*vendor*) in consideration of the purchase money so paid to him, as hereinbefore is mentioned, HATH bargained, sold, assigned, ratified, and confirmed, and by these presents DOTH bargain, sell, assign, ratify, and confirm unto the said (*trustee*), his executors, administrators, and assigns, ALL, &c. which said messuages, lands, tenements, hereditaments, and premises, are the same (*or part and parcel of the*) messuages, lands, tenements, and hereditaments, hereinbefore expressed to be granted and released, or otherwise assured unto or for the said (*purchaser*), his heirs and assigns, and also in and by (*or part or parcel (as the case may be)*), of the messuages, lands, tenements, and hereditaments, in and by) the said hereinbefore in part recited indenture of the day of demised to the said , and since assigned unto, or otherwise become vested in the said (*termor*), his executors, administrators, and assigns, for the residue of the said term as hereinbefore is mentioned. AND all the estate, right, title, interest, term and terms of years, yet to come and unexpired, trust, property, possession, claim, and demand whatsoever, both at law and in

PURCHASES.

*Vendor and
Termor to
Purchaser.*

Parcels.

(1) If the term be surrendered to merge, go to p. 424, variation, n. (1). Term to merge.

PURCHASES.

*Vendor and
Termor to
Purchaser.*

To HOLD to the
trustee for the
residue of the
term.

equity, or otherwise howsoever, of them the said (*termor*) and (*vendor*) respectively, of, in, to, or respecting the same messuages, lands, tenements, hereditaments, and premises, or any part thereof [together with the said several hereinbefore in part recited indentures of demise, and assignment (*if so*), and all benefit and advantage incident or belonging to the same or either of them, or to the covenants and agreements therein respectively contained]. To HAVE AND TO HOLD the several messuages, lands, tenements, hereditaments, and premises, hereby assigned, or mentioned or intended so to be, and every part and parcel thereof, with their respective appurtenances, unto the said (*trustee*) (1), his executors, administrators, and assigns, from henceforth, for and during all the residue and remainder which is or may be now to come or unexpired of or in the said term of five hundred years, in and by the said hereinbefore in part recited indenture of the day of expressed to be assigned to or otherwise vested in the said (*termor*) as aforesaid. BUT nevertheless, in trust

Inheritance to
trustee.

(1) Sometimes the inheritance is conveyed to a trustee for the purchaser, and the term to the purchaser; but as the term will in this case be personal assets on the death of the purchaser; and liable to debts of the lowest degree, even although it be declared to be attendant on the inheritance, *Chapman v. Bond*, 1 Vern. 188, *Thrupton v. Attorney-General*, *ibid.* 340, 2 Ch. Ca. 49, the mode pursued above is the most proper, unless where it is the wish of the purchaser that the term should be such assets.

for the said (*purchaser*), his heirs and assigns, and to be assigned and disposed of from time to time as he or they shall in writing, under his or their hand or respective hands, direct or appoint in that behalf; and in default of and until any such assignment or disposition shall be made and take effect, and in the mean time subject thereto, **IN TRUST**, and to the intent, that the now and then residue of the said term and the estate hereby expressed, or intended to be assigned, or so much thereof, of which no such assignment or disposition shall be made or take effect, shall and may attend and wait upon the freehold, reversion, and inheritance of the same hereditaments and premises, to and for the sole use and benefit of the said (*purchaser*), his heirs and assigns, in order that the same may be preserved and kept on foot, and prevented from merger, forfeiture, or other extinguishment thereof, and to protect the hereditaments and premises therein comprised, from and against all subsequent, intermediate, and other incumbrances, if any such there be. [AND in trust that he the said (*trustee*), his executors, administrators, and assigns, shall and do permit and cause the said term and estate, and all lawful and equitable benefit and advantage to be taken or had thereof, or therefrom, to be holden, enjoyed, and disposed of accordingly (1).] And the said (*termor*), for himself, his heirs, executors, and administrators, doth hereby covenant and

PURCHASES.

*Vendor and
Termor to
Purchaser.*

In trust to
attend the re-
version and in-
heritance.

Covenant by the
termor that he
has not incum-
bered.

(1) If the term be intended to be merged, instead of the as- Term to merge.
signment in the text (from p. 421, n. (1), say,

PURCHASES. declare, with and to the said (*trustee*), his executors, administrators, and assigns, and also with and to the said (*purchaser*), his heirs and assigns, [in

*Vendor and
Termor to
Purchaser.*

“ HATH bargained, sold, assigned (†), surrendered, and yielded up, and by these presents DOTH bargain, sell, assign, surrender, and yield up unto the said (*purchaser*) and his heirs, all and singular the messuages, lands, tenements, and hereditaments, in and by the said in part recited indenture of the day of demised to the said

and since assigned to or otherwise become vested in him the said (*termor*) as aforesaid, and the reversion and inheritance whereof are, and is expressed to be hereinbefore granted and released, with all and every the appurtenances to the said hereditaments belonging, and all the estate, right, title, interest, term, and terms for years yet to come, property, claim, and demand whatsoever, both at law and in equity, of him the said (*termor*), of, in, to, or concerning the same. TO HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments, and all and singular other the premises, hereby assigned and surrendered, or intended so to be, with the appurtenances, unto the said (*purchaser*), his heirs and assigns, to and for the end, intent, and purpose, that the said term of five hundred years therein, for the now residue thereof, and all the estate and interest of him the said (*termor*) in or concerning the said premises, shall and may henceforth become merged and extinguished in the freehold reversion and inheritance of the heredita-

To HOLD, &c.

to the intent
to merge.

(†) It is proper to use the words, “ of assignment,” in the surrender of a term, in order that, if there be any estate intervening between the term and inheritance, which would prevent a merger, the term may nevertheless be vested in the owner of the fee as an assignee of the term, whereas, if the words “ surrender and yield up” alone were used, and no surrender could take place, they would be without operation.

the manner following (that is to say)], that he the said **PURCHASER.**
(termor) hath not at any time or times heretofore,
 made, done, executed, committed, or knowingly
 occasioned, omitted, or suffered, nor been party or
 privy to, any act, deed, matter, or thing whatso-
 ever, whereby or by reason or means whereof the
 messuages, lands, tenements, hereditaments and
 premises hereinbefore assigned, or intended so to
 be as aforesaid, or any part thereof, or any estate or
 interest therein are, is, can, shall or may be, in
 anywise impeached, charged, incumbered, or pre-
 judicially affected, in any manner howsoever, or
 whereby the said term of five hundred years, or
 any estate or interest therein, have or hath been, or
 can or may become void or voidable (†). IN
 WITNESS, &c.

*Vendor and
Termor to
Purchaser.*

ments and premises so by these presents conveyed to, or otherwise vested in the said (*purchaser*) and his heirs as aforesaid, and wholly cease, determine, and for ever become void to all intents and purposes whatsoever."

Add covenant by the termor that he has not incumbered, similar to the above, except concluding with,

"Can, or may be protected or prevented from being hereby merged and extinguished, according to the true intent and meaning of these presents."

(†) If the title deeds concern a larger estate which is kept by the vendor, he must covenant to produce them to the purchaser, which covenant will run with the land so purchased by him, and may be inserted in the purchase deed, as *ante*, p. 196; but if the vendor has an intention of selling the rest of his estate, this covenant should be by a separate deed, and should contain a proviso that if any future purchaser of the residue of the estate shall enter into the like covenant with this purchaser,

PURCHASES. the deed of covenant shall be delivered up to the vendor, see *ante*, p. 202.

*Vendor and
Termor to
Purchaser.*

For various provisoes, &c. to be inserted when required by particular circumstances attending the title, or by agreement of parties, see *ante*, No. XVI. p. 160, *et seq.*

Provisoes, &c.

Execution, &c.

. As to the execution, attestation, receipt for consideration money, &c. &c. see *ante*, No. XV. p. 158, n. (82); No. XVI. p. 184, n. 28, *et seq.*; and also Introduction p. xliv, and l.

Stamp.

Of the stamp, see end of INTRODUCTION.

† The notes referred to by an obelisk were taken from a MS. in my possession, apparently written by a gentleman of considerable practical knowledge, but of the author of which I am wholly ignorant; some further remarks may possibly be hereafter made from the same source, and will be distinguished by the same mark of notation.

PURCHASES.

*Vendbr and
Termor to
Purchaser.*

(A) Variation *Where the Premises are chargeable with a rent or the like.*

If there be any fee farm rent, or other outgoings issuing out of the purchased premises along with other lands, it will be proper to apportion them by an agreement at the end of the conveyance, as,

AND it is hereby declared and agreed by and between the said (*vendor*) and (*purchaser*), that the said annual fee farm or other rent, or sum of £ so payable out of or chargeable upon the lands and hereditaments hereinbefore granted and released or intended so to be, together with other lands and hereditaments, under or by virtue of the said in part recited indenture, of the day of as hereinbefore mentioned, shall be apportioned and paid by them the said (*vendor*) and (*purchaser*) respectively, in the proportions following (that is to say), that one full undivided third part or proportion, (the whole into three equal parts being considered as divided) and no more, shall be payable and paid by the said (*vendor*), his heirs and assigns, for and in respect of such of the lands and hereditaments charged or chargeable therewith, as are not by these presents expressed or intended to be granted and released or otherwise assured to the said (*purchaser*), and that the other or remaining two third parts and no more of the said annual fee farm or other rent or sum shall be payable and paid only by the said (*purchaser*), his heirs and assigns, for and in respect of the lands and hereditaments so expressed or intended to be granted and released or otherwise assigned to him and them as aforesaid. [*Then add a covenant by the vendor to pay his proportion of the rent, &c. as*] AND the said (*vendor*), for himself, his heirs, executors, and administrators, doth hereby further covenant, declare, and agree, with and to the said (*purchaser*), his heirs and assigns, that he the said (*vendor*), his heirs or assigns, shall and will from time to time and at all times hereafter, so long as the said (*purchaser*), his heirs

Covenant to
pay and indem-
nify against
rent charge.

PURCHASES.

*Vendor and
Termor to
Purchaser.*

and assigns, shall pay and discharge such part or proportion of the said yearly rent or annual sum of , in and by the said hereinbefore in part recited indenture of the day of , charged or made chargeable upon the lands and hereditaments therein comprised, as according to the true intent and meaning of these presents, and of the covenant hereinafter contained concerning the same, is to be payable and paid by him and them, he the said (*vendor*), his heirs and assigns, shall and will well and truly pay or cause to be paid unto the person or persons who for the time being shall be entitled to receive the same all the residue or such other part, share, or proportion of the same yearly rent charge or annual sum of £ (that is to say), one full part of the same yearly rent or annual sum ; and also from time to time and at all times hereafter, save, defend, keep harmless, and indemnified, him the said (*purchaser*), his heirs, executors, administrators, and assigns, and his and their goods and chattels, and lands, and tenements, from and against the same, and all costs, charges, damages, and expenses which he, they, or any of them shall pay, sustain, or be put unto for or by reason of the nonpayment thereof. PROVIDED ALSO, and it is hereby also granted, declared, and agreed, that if at any time or times hereafter any distress or distresses shall be made in or upon the said lands and hereditaments expressed or intended to be hereby granted and released to the said (*purchaser*) and his heirs, by the person or persons who for the time being shall be entitled to the said yearly rent charge or annual sum of £ , for any greater proportion thereof, than according to the true intent and meaning of these presents is payable by him or them for or in respect of the same, then and in such case, and from time to time as often as the same shall happen, it shall be lawful for the said (*purchaser*), his heirs or assigns, into and upon all or any part of such of the lands and hereditaments comprised in the said indenture of the day of as are not hereby expressed or intended to be granted or released, to enter and distrain for all such sum or sums, costs, charges, damages, and expenses as he the said (*purchaser*), his heirs, executors, administrators, or assigns, shall pay, sustain, or be

put unto by reason or in consequence of any such distress or distresses being so made in or upon the said lands and hereditaments expressed to be hereby granted and released, or in or upon any part thereof, and act and deal with and concerning such distress or distresses, in like manner, as in the case of distress for rent reserved by lease or common demise, To THE END AND INTENT that the said (*purchaser*), his heirs, executors, administrators, and assigns, may be thereby fully satisfied and paid all such sum and sums of money, costs, charges, damages, and expenses as he or they shall or may pay or sustain as aforesaid, (*add a similar covenant by the purchaser with the vendor as to the proportion to be paid by him*).

PURCHASES.

*Vendor and
Tenant to
Purchaser.*

PURCHASES.

*Vendor and
Termor to
Purchaser.*

SUGGESTIONS

TO THE

S O L I C I T O R

ON ASSIGNMENT OF TERMS.



In what cases a term, and which of several terms, should be assigned to attend.

As much doubt is often entertained as to whether a term (and which of several terms) ought to be brought forward to be attendant upon the inheritance, or merged; it may be useful to add here some few observations on this head. This is done here out of consideration to the importance and frequent occurrence of the subject of outstanding terms, although contrary to the general plan of the work; which is intended to be confined solely to the actual forms of the different assurances, and their reasons and comparative essentiality. But all questions relative to the *doctrinal* parts of Conveyancing, whether in relation to the forms of assurances themselves, or the estates or interests which this or that particular form or species of assurance is best calculated to transfer, has been intended to be fully treated of in the Author's preceding work on the *Elements* of Conveyancing.

In considering whether an outstanding term, or which (if any) of several outstanding terms, it will be proper to bring forward and assign to attend, it is to be considered, 1st, Whether the term when created was a legal or an equitable term, viz. whether the person creating it had the legal estate in the in-

heritance, or only an equitable estate. If it be not a legal term, it can be of no use as a protection, as it is the prior legal estate in clean hands, i. e. without fraud or notice of any subsisting charge that affords the protection, on the principle that when two persons leave a lien upon the same estate, and both have an equal equitable right to the benefit of it, he who has the prior legal right will be permitted to use such legal right for his protection or advantage. For the equitable right of the parties being equal, the Court of Equity will not interfere to deprive either of them of any legal preference his diligence or good fortune may have obtained.

PURCHASES.

*Vendor and
Terror to
Purchaser.*

2dly, It is to be considered, whether the term, in its creation, was prior to any incumbrance that may by possibility be set up as against the purchaser, for it is against incumbrances arisen since the creation of the term only, of course, against which it can afford a protection, for it is as against those only which it can give a right prior to others.

3dly, It must be seen that the term is in existence, and not merged by having at any time united with the inheritance, or been barred by a subsequent recovery or the like, and hence the oldest legal term which is subsisting is to be selected for the purposes of protection. And it is to be observed, that in all cases where the person creating the term had the legal estate in the fee at the time, the term will be legal too, whether it be in remainder, after a prior term created, or whether it be the only term subsisting. As for example, suppose I demise an estate of which I am owner of the inheritance, to another, for one thousand years, by way of mortgage, or for any other purpose, and then create a fresh term of two thousand years, this second or two thousand years term, will be a legal term notwithstanding the prior term for one thousand years is still existing, because I had

PURCHASES. the legal fee of the land, notwithstanding the prior term, and consequently this latter termor may distrain, and exercise all the other legal remedies for the money secured by his term in like manner as the first termor may. But if, instead of granting the estate for a term only, I convey it in fee, though for a temporary purpose, as by way of mortgage and subject to redemption, and then demise the same estate for one thousand years or other period (which, when I retain a right of redeeming the fee, I may do), this term will be an equitable term only. Why? Because I had previously parted with the legal fee, and had at the time of creating this term only an equitable fee, i. e. not a right at law, but only in equity, to my original estate, and consequently the assignment of this term, though satisfied, will afford no protection to a purchaser against any subsequent incumbrance, although created subsequent to such term, for when all parties have the same equitable right without either a priority at law, the Court, as before observed, will not interfere between them; and as no use can be made of the term at law, it follows that it must be wholly useless.

*Vendor and
Termor to
Purchaser.*

Where there are many terms in a title, it is proper, subject to the preceding remarks, to preserve the oldest term, and to merge the rest; and each term, if more than one be preserved, should be assigned to a different trustee, as it is now settled that a term in possession will merge in a term in reversion, even where the latter is for a less number of years.

Terms, then, as they are used in conveyancing to protect inheritances, have their operation, we perceive, upon this general principle, that where there is a competition of claims, and the equity of the parties is equal, he who has the law shall prevail. Thus, where the heir, and a creditor who has obtained judgment, have each of them a claim upon the inheritance under different titles, and are

equal in equity, both being purchasers in a legal sense for a valuable consideration, the creditor is preferred in law as being the elder purchaser, because his claim is founded on the judgment had against the ancestor of the lands, before they descended to the heir, *et qui prior est tempore potior est jure*. But if there be a term of years subsisting in the estate upon trust to attend the inheritance, the equitable right of the heir being absorbed by the accession of the legal interest in the land, during the continuance of the term, it will be a bar to the execution of the judgment; for although the trust or benefit of the term is annexed to the inheritance, the legal interest of the term remains distinct and separate from it at law, in which its protective quality consists; and see Co. Litt. 290, b. and Sugden's Law of Vendors and Purchasers, p. 371.

PURCHASES.

*Vendor and
Termor to
Purchaser.*

A term which has been once assigned to attend the inheritance must, if required again to be assigned, (as we have observed in a prior note), be at the purchaser's expense; the reason of which is, that when it has been once so assigned by the direction of the person for whose benefit it was created, it is by that means discharged of the charge upon it, and is, so far as concerns the title, just in the situation it ought to be. And if, therefore, the purchaser, for his own satisfaction, chooses to have it taken from the old trustee and placed in one of his own naming, this being a matter of desire and convenience only, and not of necessity, it is reasonable it should be at his own expense. It is nevertheless right to have it assigned to his own proper trustee, not only because such trustee is more likely than a stranger to be accommodating to his wishes in the disposition of the term, but because if the term is left too long outstanding, and not from time to time brought forward, it may get so far behind

PURCHASES. that it may be difficult to discover in whom it is ; in which case a prerogative administration must be obtained for the express purpose, which arising from the neglect of the owner of the inheritance who has a right at all times to call for it must be obtained at his expense. And a prerogative assignment, moreover, is not to be depended upon, because the administrator of such term is at best but a factitious representative of the real termor, and who or his *bona fide* representatives may have already administered to and disposed of the term, and such administration and disposition would of course give a prior, if not a more rightful title than that given by the ordinary, whose letters of administration can only extend to such of the termor's chattels, &c. as remained undisposed of by his will, or unadministered to by his termor or the original administrator.

Vendor and
Termor to
Purchaser.

Assignment of
judgments.

And as lands may be extended by *elegit* under a judgment obtained against the owner, if on a purchase there be any such, a competent part of the purchase money should be applied to satisfy them, and the judgment should, in like manner as a term, be assigned to a trustee, as a protection against incumbrances. An example will show how judgments afford such protection. Suppose a judgment be obtained against the owner of an estate, who afterwards confesses other judgments, or mortgages his land, if a purchaser pays off the first judgment without notice of the subsequent incumbrances, and takes an assignment of it to a trustee (not to himself, for then it would merge in the lands), as a protection to the purchased premises, and the mortgagee or other incumbrance should afterwards make a claim upon him, he would be entitled to stand in the place of the creditor whose judgment he had paid off, and would be protected in his purchase, as to the amount

of the money he had paid upon it; whereas if the judgment be released instead of assigned, the purchaser might be left exposed to the claims of other incumbrances (1).

PURCHASES.

*Vendor and
Termor to
Purchaser.*

(1) Those who have attended my Lectures on Conveyancing will probably perceive that the above observations were extracted from thence, and for which I ought perhaps to apologise. This is, however, the only instance (except as to part of the Introduction) in which I have taken or intend to take the same liberty, and which has originated from the reason with which I commenced the extract, combined with want of time to give it a new form.

PURCHASES.

*Vendor to
Purchaser to
uses to bar
Dower.*

No. XXVIII.

*Conveyance by a Vendor to a Purchaser to Uses to
bar Dower; with various Forms of Limitation
for that Purpose.*

*Variations where the Limitation is to prevent Curtesy.
Also where part of the Premises are Copyhold.*

*Where the Conveyance is of a Moiety or other undi-
vided Part of the Estate.*

*Where of a Remainder or Reversion, &c. &c. as be-
low (1).*

THIS INDENTURE, of three parts, made the
day of in the year of the reign, &c.
Parties. and in the year of our Lord . BETWEEN
(*the vendor*) of, &c. (2) of the first part,

- Tail.** (1) If the vendor be *tenant in tail*, see *ante*, No. XXII.
Life. If tenant for *life*, see *ib.* No. XXIII.
Reversion. If he be entitled in *remainder* or *reversion*, see *ib.* No. XXIV.
**Equity of re-
demption.** If the conveyance be of an *equity of redemption* only, see *ib.*
No. XXV.
Moiety, &c. If a *moiety* or other *undivided part*, see *ib.* No. XXVI.
Wife. (2) If the vendor be married, and his wife be entitled to
dower, make her a party with her husband, as *post*, Vol. II.
No. XXXI.
If the vendor took the estate with limitations to a trustee to
prevent dower, make such trustee a party of the *second* part, as
post, Vol. II. No. XXXIV.

(*the purchaser*) of, &c. of the second PURCHASES.
 part, and (*the trustee*) of, &c. (a trustee
 named and appointed by and on the behalf of the
 said (*purchaser*) for the purposes hereinafter ex-
 pressed) of the third part. WHEREAS (1), the said
 (*vendor*) is seised in his demesne as of fee of the
 several messuages, lands, and hereditaments here-
 inafter described. AND WHEREAS, the said (*pur-
 chaser*) hath contracted with (2) the said (*vendor*)
 for the absolute purchase thereof; free from in-
 cumbrances (other than as hereinafter is men-
 tioned) at the sum of £ ; and hath requested
 that the same may be conveyed and assured to
 him to the uses, and in the manner hereinafter
 expressed. Now THIS INDENTURE WITNESSETH (3),
 that in pursuance and execution of the said con-
 tract, and in consideration of the sum of £
 of lawful money (4) of that part of the United
 Kingdom of Great Britain and Ireland, called
 England, to the said (*vendor*) in hand well and
 truly paid by the said (*purchaser*) at or imme-

Vendor to
Purchaser to
uses to bar
Dower.

Recitals.

WITNESS,
that in consi-
deration of the
purchase
money.

(1) For the form of recitals of different species of deeds and other events and transactions, see INDEX *voc.* RECITALS. Recitals.

(2) If the premises were sold by *public auction* or otherwise than by private contract, see *ante*, No. XVI. p. 163. n. (4). Auction.

(3) For the construction and reason of the different parts of the deed upon which no remarks are subjoined, see the notes in No. XV. *ante*, (p. 122. *et seq.*) Construction.

If the vendor took the estate to uses to prevent dower, insert here the witnessing part in Vol. II. No. XXXIV. marg. *. Vendor taking to prevent dower.

(4) If the consideration be paid otherwise than in money, or at any other time than at the execution of the conveyance, see *ante*, No. XVI. p. 165. n. (6). *et seq.* Consideration.

PURCHASES.

*Vendor to
Purchaser to
uses to bar
Dower.*

The vendor
grants and re-
leases the land,
&c.

To the pur-
chaser.

diately before the sealing and delivery of these presents, the receipt whereof, [and that the same is in full for the absolute purchase of the inheritance in fee-simple in possession, of the hereditaments hereinafter described,] the said (*vendor*) doth hereby acknowledge, [and of and from the same doth fully and absolutely acquit, release, discharge, and exonerate the said (*purchaser*) his heirs, executors, administrators, and assigns, and also the said hereditaments by these presents], [and also for and in consideration of the further sum of 5s. of like lawful and current money to the said (*vendor*) at the same time in hand paid by the said (*trustee*) the receipt whereof is likewise hereby acknowledged,] He the said (*vendor*) at and by the request and nomination of the said (*purchaser*) testified by his signing and sealing these presents, HATH granted, bargained, sold, aliened, and released, and by these presents DOTH grant, bargain, sell, alien, release, and confirm unto the said (*purchaser*) and his heirs, ALL (1), &c. or howsoever otherwise, the said messuages, lands, tenements, and hereditaments, or any part thereof, now are, or is, or heretofore were or was situated, tenanted, called, known, described, or distinguished; and also all other (if any) which are

Parcels.

(1) Here describe the subject of the conveyance by its ancient and present name, situation, tenancy, &c. See descriptions applicable to different species of property, INDEX *voce* PARCELS, and *ante*, No. XV. p. 128. n. (13). also No. XVI. p. 172. and No. XXVII. p. 405, n. (2).

described or comprised in a certain indenture of **PURCHASES.**
 bargain and sale for a year, hereinafter particularly
 referred to. **TOGETHER WITH** all [houses, out-
 houses, buildings, barns, stables, coach-houses,
 dove-houses, yards, cellars, vaults, areas, benefit
 and advantage of ancient and other lights, ways,
 paths, passages, gardens, orchards, ponds, waters,
 land covered with water, water-courses, timber
 and other trees, woods, underwoods, and the
 ground and soil thereof, mines, quarries, rights
 and privileges of common of every kind, and all]
 and all manner of [other] rights, privileges, ease-
 ments, appendants and appurtenances whatsoever,
 to the said hereditaments and premises, or any
 part thereof belonging, or in anywise appertaining,
 [or reputed or deemed so to be, or with the same
 or any part thereof, now or heretofore holden,
 used, occupied, or enjoyed,] except, &c. (1). (ALL
 which said messuages, lands, tenements, and here-
 ditaments, are now in the actual possession of, or
 legally vested in the said (*purchaser*) by virtue of
 a bargain and sale (2) to him thereof made by the
 said (*vendor*) for five shillings consideration, by
 indenture bearing date on the day next before the
 day of the date of these presents, for the term of
 one year, commencing from the day next pre-
 ceding the date of the same indenture, and by

*Vendor to
 Purchaser to
 uses to bar
 Dower.*

General
 appurtenances.

Reference to
 the bargain and
 sale for a year.

(1) See the form of this bargain and sale, No. XIII. p. 110. **General words.**
 and No. XIV. p. 117.

(2) Insert here an exception of a right of way or other appur- **Exception.**
 tenant, if any.

PURCHASES.

*Vendor to
Purchaser to
uses to bar
Dower.*

Grant of title
deeds.

And copies.

force of the statute made for transferring uses into possession) and the reversion and reversions, remainder and remainders, of and in the said hereditaments and premises; and all and singular the rents, issues, profits, and proceeds thereof: AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, at law and in equity, of him the said (*vendor*) in, to, upon, or respecting the same hereditaments and premises, or any part thereof. [TOGETHER with all deeds, muniments, writings, and other evidences whatsoever, in anywise relating to the same hereditaments, or any part thereof, either alone or together with other hereditaments or property of inferior value, now or hereafter being or to be in the possession or lawful power of the said (*vendor*) or his heirs, or of any person or persons from whom he or they can or may procure the same, without action or suit at law or in equity; and true and attested copies, when required by the said (*purchaser*) his heirs or assigns, (duly stamped) and of all other deeds, muniments, writings, and evidences, (not being of record) (1) so now or hereafter being or to be in his or their custody or power as aforesaid in anywise relating

Schedule.

(1) If the title deeds are not to be delivered to the purchaser, but a covenant entered into for the production of them, as contained in an underwritten schedule, add,

“ And whether mentioned in the schedule here underwritten or hereunto annexed or not.”

to the same hereditaments and premises, or any part thereof, jointly with other hereditaments or property of equal or greater value; such copies, when first required, to be made and delivered at the expense of the said (*vendor*) his heirs, executors, or administrators, but all future copies to be made and taken at the expense of the person or persons requiring the same.] **TO HAVE AND TO HOLD** the said messuages, lands, tenements, hereditaments, and premises, hereinbefore and in the said indenture of bargain and sale described, and hereby granted and released, or otherwise assured or intended so to be, with their and every of their rights, members, privileges, appendants, and appurtenances unto him the said (*purchaser*) and his heirs (1), but nevertheless to the

PURCHASES.

*Vendor to
Purchaser to
uses to bar
Dower.*

TO HOLD to the purchaser to uses to bar dower.

(1) If the conveyance be to a feme covert, who is desirous of preventing a title of curtesy accruing to her husband, in order that the estate may descend clear of incumbrances to her issue, it may be limited either to the purchaser and another person, for the purpose of creating a joint-tenancy, or an estate of freehold may be conveyed to a trustee during the life of the wife, as the husband is not entitled to curtesy of a remainder or reversion expectant on such estate. See 2 Elem. Conv. 2 Ed. p. 209. But the creation of a trust alone will not be sufficient for this purpose, as though a woman is not dowable of a trust estate of her husband, yet it has been holden, and is now settled (contrary perhaps to all analogous reasoning) that a husband is entitled to curtesy out of such an estate of the wife, see *Banks v. Sutton*, 2 P. Wms. 700. *Chaplin v. Chaplin*, 3 ib. 229. *Caseburn v. Inglis*, 1 Atk. 603. *Godwin v. Windsor*, 2 ib. 526, or the limitation may be,

Limitation to
bar curtesy.

Trust estate
liable to curtesy,
although not to
dower.

“ To hold to the said (*feme purchaser*) and her heirs, to the uses, upon the trusts, and for the intents and purposes

Uses to bar
curtesy.

PURCHASES.

*Vendor to
Purchaser to
uses to her
Dower.*

uses, and for the ends, intents and purposes hereinafter declared or expressed concerning the same, (that is to say)(1) to the use of such person and

hereinafter expressed concerning the same, that is to say, to the use of such person and persons, for such estate and estates, interest and interests, and for such intents and purposes, and in such manner, and with and subject to such powers, provisoes, conditions, and agreements as the said (*purchaser*) whether covert or sole, and notwithstanding her present or any future coverture, shall by any deed or deeds, or instrument or instruments in writing to be by her sealed and delivered in the presence of, and attested by two or more credible witnesses, or by her last will and testament in writing, or any writing in the nature of, or purporting to be such, or any codicil or codicils thereto, to be respectively signed, sealed, and published by her in the presence of and attested by three or more credible witnesses, shall from time to time direct or appoint, and in default or failure of any such direction or appointment as to the whole or any part of the said premises, or any estate or interest therein, then as to such part thereof, of which none shall be made or take effect, to the use of the said (*purchaser*) and her assigns during her natural life, without impeachment of or for any manner of waste, and upon the determination of that estate in her lifetime to the use of the said (*trustee*) his executors and administrators during the life of the said (*purchaser*), but in trust for the said (*purchaser*) and her assigns, to the end that the present and every future husband of the said (*purchaser*) shall be barred of curtesy out of the same premises, and upon the determination of the estate so limited to the said (*trustee*) as aforesaid, then to the use of the said (*purchaser*) her heirs and assigns for ever."

Limitation to
bar dower ge-
nerally proper.

(1) It is proper in most cases to convey an estate with limitations to prevent dower (unless the wife be already barred by settlement or otherwise); for although there be an outstanding term which may be assigned to attend the inheritance, (which is sometimes relied on) it is not always a certain security against the wife's claim, and a future grantee of the estate is therefore

persons, for [*if a shorter form is preferred proceed as below (1) or omit the words, &c. within brackets*]

PURCHASES.

*Vendor to
Purchaser in
uses to bar
Dower.*

in practice generally advised to require a fine to be levied at the vendor's expense. See Sugd. Vend. & Pur. 246. but see also observations of Eldon, Ch. in *Maundrell v. Maundrell*, 10 Ves. jun. 261.

The old way of limiting an estate to prevent the wife of the purchaser from being dowable was to convey it to the "purchaser and a trustee, and their heirs (giving them a joint estate in the fee) but as to the estate and interest of the trustee in trust for the purchaser," thus making the purchaser and his trustee joint-tenants for life, with remainder to the purchaser in fee; hence the purchaser not being, during their lives, solely seised of an estate of inheritance, the wife's title did not attach, it not being incident to a joint-tenancy. If the purchaser, however, should survive his trustee, he will then become solely seised, and his wife's title accrue, or "to the purchaser, and three or more trustees, and the heirs and assigns of the purchaser, but as to the estate of the trustees, in trust for the purchaser, his heirs and assigns," which makes it less probable that the purchaser should be the survivor. But the form of limitation given in the text appears to be that which is most usually followed by modern practitioners; and as it embraces and provides against every kind of seisin in the husband, by which that title can arise, it appears, as a general form, to be the best, although, perhaps, unnecessarily verbose; for the principles upon which it is founded, see Co. Lit. 216. a. n. (2). 379, b. n. (1). Fearn. Cont. Rem. 509, n. *. 5 Pow. Prec. p. 16, in notes. Watk. Princ. Conv. c. vi. and Mr. Preston's notes there. Sugd. on Pow. 160, and 2 Elem. Conv. 2 Edit. p. 270, see also the case of *Maundrell v. Maundrell*, 7 Ves. jun. 567, and 10 *ibid.* 246; but in cases where brevity is particularly desirable, it may be shortened by omitting the lines within brackets, without destroying its efficacy.

(1) Or it may be as follows :

"To the use of such person or persons, upon such trusts, for such estates and interests, intents, and purposes, and in such manner, and with and subject to such powers, declarations, and agreements as the said (*purchaser*) or his no-

Shorter form of
the above
limitation.

PURCHASES. such estate and estates, interest and interests,
[by way of legacy, annuity, rent charge, or

*Vendor to
Purchaser to
uses to bar
Dower.*

minees or appointees, by any deed, or other instrument in writing, to be sealed and delivered by him or them in the presence of and attested by two or more witnesses, or by his last will or testament in writing, or any codicil thereto respectively, to be by him signed, sealed, and published in the presence of and attested by three or more credible witnesses, shall from time to time direct or appoint, and in default or failure of any such direction or appointment, as to the whole or any part of the said premises, or any estate or interest therein, then as to such part thereof, of which none shall be made or take effect, to the use of the said (*purchaser*) and his assigns, during his natural life, without impeachment of waste, and upon the determination of that estate in his lifetime, to the use of the said (*trustee*) his executors and administrators, during the life of the said (*purchaser*) in trust for him and his assigns, to the intent that his present and every future wife may be barred of dower out of the said premises, and upon the determination of the estate so limited in use to the said (*trustee*) as aforesaid, then to the use of the said (*purchaser*) his heirs and assigns for ever."

Estate should not be limited to uses to prevent dower when a rent is reserved to vendor, or covenants entered into with him by the purchaser relative to the land.

It is to be observed, however, that if a rent or other payment out of the land is reserved or granted to the vendor, or any covenants relative to the land be entered into by the purchaser, the mode here adopted of limiting the estate to the purchaser's appointment may, it should seem, be objected to on the part of the vendor, because this would upon an appointment by the purchaser prevent a privity subsisting between such vendor and the appointee, who would take under the deed reserving the power, and not from the appointer, and hence the appointee would not be bound by the covenants entered into by his vendor. The same objection occurs in other cases where the purchaser is required to enter into any covenant with the vendor which is intended to run with the land and bind assignees; in these cases, therefore, the estate should, on behalf of the vendor, be limited to the purchaser in fee, and not to uses. See *Roach v. Wadman*, 6 East, 289.

otherwise, in such parts, shares, and proportions, upon such trusts] for such ends, intents,

PURCHASES.

*Vendor to
Purchaser to
uses to bar
Dower.*

Other forms are frequently met with in the drafts of gentlemen of great respectability in this branch of the profession, which are to be considered as more or less efficacious, accordingly as they appear more or less effectually to prevent a *sole seisin* in the husband *during the coverture*, of an estate in *fee-simple* or *fee-tail* in *possession*:—the following are some of the most usual forms:

Other forms to
bar dower.

To the purchaser and trustee (from a draft prepared by the late Mr. Watkins).

“To hold unto the said (*purchaser*) and (*trustee*) and their heirs, but to the use of such person or persons, and for such intents and purposes, as the said (*purchaser*) shall by any deed, will, or other sufficient writing, direct or appoint, and in default thereof to the use of the said (*purchaser*) for his life, with remainder to the use of the said (*trustee*) his executors and administrators, during the life of the said (*purchaser*), but in trust for the said (*purchaser*) and his assigns, with remainder to the use of the said (*purchaser*) his heirs and assigns for ever.”

“To hold to the (*purchaser*) and his heirs, to the use of him the said (*purchaser*) and his assigns during the term of his natural life, without impeachment of or for any manner of waste, and after the determination of that estate by forfeiture, or otherwise, in his lifetime, to the use of the said (*trustee*) his executors, administrators, and assigns, during the life of the said (*purchaser*), in trust for him the said (*purchaser*) and his assigns, and to prevent any wife of the said (*purchaser*) from being entitled to dower in or out of the said premises, and after the decease of the said (*purchaser*) to the use of the heirs and assigns of him the said (*purchaser*) for ever.”—This form is a good deal in use with modern practitioners.

To the purchaser and trustee and their heirs (from various drafts which have come before me).

“But to the use of such person and persons,” &c. (*as ante*,

PURCHASES. and purposes, [in such manner and form, and either absolutely or conditionally, and for any

*Vender to
Purchaser to
uses to bar
Dower.*

p. 440, n. (1)), “ as the said (*purchaser*) during his lifetime shall by deed or will appoint, and in default of such appointment to the use of the said (*purchaser*) for the term of his natural life, and from and immediately after his decease, to the use of the right heirs of the said (*purchaser*)” or “ and from and after the determination of that estate, in his lifetime, to the use of the said (*trustee*) his executors and administrators, during the life of the said (*purchaser*) in trust nevertheless for the said (*purchaser*) his heirs and assigns, and after the determination of the estate so limited to the said (*trustee*) to the use of th said (*purchaser*) his heirs and assigns for ever.”

To a trustee and his heirs,

“ To the use of the said (*purchaser*) and his assigns, for the term of his natural life, and from and after his decease to the use of such person or persons, &c. as he shall by deed or will appoint, and in default of such appointment, to the use of the said (*trustee*) his heirs and assigns, in trust nevertheless for the said (*purchaser*) his heirs and assigns, for ever.”

The following were extracted from drafts prepared or settled by gentlemen of professional eminence now in practice.

To the purchaser and a trustee,

“ To the use of such person or persons, &c. as the said (*purchaser*) shall by deed or will appoint, and in default thereof, to the use of the said (*purchaser*) and (*trustee*) and the heirs and assigns of the said (*purchaser*) for ever, but nevertheless as to the said (*trustee*) and the estate so hereby limited to him, in trust for the said (*purchaser*) and his heirs and assigns for ever.”

To the purchaser only,

“ To the use of him the said (*purchaser*) and his assigns, for the term of his natural life, and from and after his decease, to the use of such person or persons, &c. as he shall

term or number of years, or for life or lives, and charged or chargeable with any sum or sums of

PURCHASES.

*Vendor to
Purchaser to
uses to her
Dower.*

by deed or will appoint, and in default of such appointment, to the use of his own right heirs for ever."

To the purchaser and his trustee, and their heirs, (from a draft settled by the late Mr. Shadwell).

"To the use of the said (*purchaser*) and his assigns, during the term of his natural life, and from and after the determination of that estate in his lifetime, to the use of the said (*trustee*) and his heirs, during the life of the said (*purchaser*) in trust nevertheless for the said (*purchaser*) and his assigns, and from and after the determination of the estate so limited in use to the said (*trustee*) to the use of the said (*purchaser*) his heirs and assigns for ever."

"To the use of a (*trustee*) during the joint lives of husband and wife, with remainder to the husband in fee," but the objection to this mode is that on a conveyance during coverture the trustee must join to pass the fee.

To the purchaser and his heirs,

"To the use of such person or persons, &c. as the said (*purchaser*) shall by deed or will appoint, and in default thereof, to the use of the said (*purchaser*) his heirs and assigns, for ever."

The propriety of this last limitation has, however, been questioned—see 1 Sand. Us. and Tr. 157. n. (1). *Cox v. Chamberlain*, 4 Ves. jun. 636. and *Maundrell v. Maundrell*, 7 Ves. jun. 567. A fee determinable by power of appointment having been compared to a fee determinable by a shifting use, in which case it is held that the husband's right to curtesy continues, notwithstanding the determination of the wife's estate, see 1 Leon. 168. But see Co. Lit. 216. a. n. (2). 379. b. a. (1). and observations of Eldon Chanc. in *Maundrell v. Maundrell*, 10 Ves. jun. 264, 266. Independently of these doubts, this appears to be a very eligible form of limitation, as the wife will be barred of her dower, only in the event of her husband's appointment in his lifetime, for as it is now agreed that the fee vests in the purchaser until execution of the power, *Smith v. Camelford*, 2 Ves. jun. 698. *Read v. Read*, 5 ib. 748; the wife's title to dower will of course attach

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*Vendor to
Purchaser to
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money, either annually or in gross, or otherwise, and subject to such powers of revocation (1) and new appointment, and other powers, provisoes, conditions, restrictions, limitations, declarations, and agreements] as the said (*purchaser*) (2) [either personally and on his own part and behalf, or on the part or behalf, or concurrently with, or at or by the request or direction of any purchaser, nominee, appointee, or releasee, under or in pursuance of these presents,] at any time or times, and from time to time, by any deed or deeds, instrument or

upon it, and continue until divested by some future appointment. And it seems hard that a limitation which is in general intended for the sole purpose of preventing the necessity of levying a fine in case the husband should dispose of the estate in the lifetime of his wife, should be so framed as altogether to preclude the wife of the provision the law allows her on her husband's death, although he died without any such disposition, and meant, therefore, as it may be presumed, that his wife should have her dower.

(1) An appointment may reserve a power of revocation, although no such power to revoke be contained in the deed creating the power, *Adams v. Adams*, Cowp. 651. but, unless such power of revocation be reserved, an appointment once made will be absolute, and cannot be revoked, *Hatcher v. Curtis*, 2 Freem. 61. even though the original deed authorize future revocations, *Prec. Chanc.* 474.

Purchaser's
appointment.

(2) It has been contended (on the principle that a power cannot be delegated to another) that under the usual limitation to such persons, &c. as the purchaser shall appoint, the estate cannot again be limited to prevent dower on a future sale, which would be transferring the power to such future purchaser; but as the purchaser is the real and substantial owner of the estate, there does not seem to be any room for this doubt. The words here added will, however, it is presumed, obviate the objection, see *How v. Whitfield*, 1 Vent. 338. 2 Shower, 57. 1 Freem. 476. Bunb. 166.

instruments in writing, to be by him [signed (1)], sealed, and delivered, in the presence of, and attested by two or more credible witnesses [or (2) by his last will or testament in writing, or any codicil or codicils thereto, to be respectively by him, or by his direction, signed, sealed, and published, in the presence of, and attested by three or more credible witnesses,] shall direct, limit, or appoint, or [give or devise] the same, or any part thereof; and in default of, and until such or some other sufficient direction, limitation, or appointment, [gift or devise], shall be made; and as to such part of the said lands, tenements, hereditaments, and premises, and such estate and estates, interest and interests therein, of which no such direction, limitation, or appointment, [gift or devise,] shall be made, or take effect, and when

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Purchaser to
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(1) As the usual attestation of deeds is "sealed and delivered" only, without "signed," quære, whether "signed," would not better be omitted, as a requisition is the exercise of powers, and see *Doe dem. deligat v. Holsewain*, 1 Stark. 421.

(2) It is not necessary that a will designed to operate merely as an appointment under a power, should be executed or attested as required by the statute of frauds, see 3 Ch. Ca. 69, *Wilkes v. Holmes*, 9 Mod. 485; the lines within brackets may therefore be omitted without prejudicing the execution of the power; in which case an appointment by a will executed in the presence of two witnesses would be a good exercise of the power; but as there is more danger of a person being imposed upon in exercising his power by will (which may be made in *extremis*) than by deed, it seems proper to require at least equal formalities in the execution of an appointment by will as by deed.

Appointment by will need not be executed as required by the statute of frauds.

Proper to require the same formality in appointment by will as by deed.

PURCHASES.

*Vendor to
Purchaser to
uses to bar
Dower.*

and as any estate or estates, interest or interests, so directed, limited, appointed, [given or devised,] shall determine, to the use of the said (*purchaser*) and his assigns, during the term of his natural life, without impeachment of waste, and with full power to commit waste; and from and after the determination of that estate, by any means in his lifetime, to the use of the said (*trustee*) his executors and administrators (1), during the natural life of the said (*purchaser*), in trust nevertheless for the said (*purchaser*) and his assigns, [and to permit and suffer him and them to receive and retain the rents, issues, and profits thereof,] during his natural life [for his and their own proper use and benefit; and to the end and intent that the present and every future wife of the said (*purchaser*) may be barred and precluded from all estate, right, and title of or to dower, in or out of the same premises, or any part thereof;] and from and immediately after the determination of the

“Executors and Administrators.”

An estate *per autre vie* may be limited either to real or personal representatives, unless the property be incorporeal.

The intervening estate to prevent dower must be an estate of freehold.

(1) The more usual form of limitation, is to the “heirs and assigns,” and not to the “executors and administrators,” of the trustee; but as executors and administrators are less likely to be infants, or otherwise incapacitated to concur in any act which may be required of them by the cestui que trust, and as an estate *per autre vie*, is equally limitable to the *executors* as to the *heirs* of the owner; *Oldham v. Pickering*, Carth. 375. 2 Roll. Ab. 151. 3 Atk. 466. *D. Marlborough v. Godolphin*, 2 Ves. 61. *Ripley v. Waterworth*, 7 Ves. jun. 425; this appears to be a preferable mode.

This intervening estate must be an estate of freehold, and not for a term of years only—see *Bates v. Bates*, 1 Salk. 253. 1 Ld. Raym. 326.

estate hereby limited in use to the said (*trustee*) **PURCHASERS.**
 [his executors and administrators, during the life
 of the said (*purchaser*)], then to the use and behoof
 of the heirs and assigns of the said (*purchaser*) for
 ever (1).” AND the said (*vendor*) for himself, his
 heirs, executors, and administrators, doth hereby
 covenant and declare to and with the said (*pur-
 chaser*) his heirs, appointees and assigns, [and
 with and to the said (*trustee*) his executors, ad-
 ministrators, and assigns (2)], in the manner fol-
 lowing (3), (that is to say) that for and notwith-
 standing any act, deed, matter, or thing whatso-
 ever, at any time heretofore made, done, executed,
 or knowingly occasioned or suffered by him the
 said (*vendor*) (4), to the contrary, he the said
 (*vendor*) at the time of the sealing and delivery of

*Vendor to
 Purchaser to
 uses to bar
 Dower.*

(1) If part of the lands be copyhold, a covenant to surrender **Copyhold.**
 them may properly be introduced here, for the form of which,
 see No. XX. p. 266, and if the vendor's wife be a party, add co- **Wife.**
 venant to levy a fine, as in Vol. II. No. XXXI.

(2) Or the covenants for the title may be with the trustee **Covenants with**
 only, his heirs and assigns, or his assigns only, as the cestui que **purchaser.**
 use will become an assignee of the land by virtue of the statute
 of uses, and entitled to the benefit of the covenants for the title
 as he would at common law, see *Lee v. Arnold*, 4 Leon. 27.
Moor, 97. S. C. per nom. *Appowel v. Maraix*. *Roll v. Osborne*,
Moor, 859.

(3) If part of the land be copyhold, make such additions to **Copyholds.**
 this and the subsequent covenants as will be found in those of
 No. XX. p. 269, marg. (*c, c, &c.*)

(4) If the vendor became entitled to the estate by devise, **Vendor taking**
 add, **by devise,**

“ Or the said (*devisor*) deceased.”

PURCHASES.

*Vendor to
Purchaser to
uses to bar
Dower.*

these presents, is lawfully, rightly, and absolutely seised in his demesne as of fee, in his own right, and to his own use, of all and singular the messuages, lands, tenements, hereditaments and premises, hereinbefore granted and released, or otherwise assured or intended so to be, as of, or for a good, perfect, clear, absolute, and indefeasible estate of inheritance, in fee-simple, in possession, and in severalty, without the said estate or hereditament being subject or liable to any [trust, condition, power of revocation, or of limiting or declaring any new or other use or uses, or any other] qualification, restriction, matter, or thing whatsoever, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever, (leases and agreements for leases, of which the said (*purchaser*) hath notice, only excepted).

And hath right
to convey.

AND ALSO that (for and notwithstanding any such act, deed, matter, or thing as aforesaid, except as aforesaid,) he the said (*vendor*) now hath in himself full power, and lawful and absolute right and title to grant, bargain, sell, release, and assure all and singular the said hereditaments and premises, and the possession, reversion, and inheritance thereof, unto the said (*purchaser*) and his heirs, to and for the uses, intents and purposes, and

or descent.

If by descent, add,

“ Or any of his ancestors,” and see No. XV. p. 141. n. (39); and No. XVI. p. 178. *et seq.* in notes.

in the manner and form hereinbefore expressed concerning the same, and according to the true intent and meaning of these presents. AND further, that (1) all and singular the same hereditaments and premises, with their and every of their rights, members, appendants, and appurtenances, shall from time to time, and at all times hereafter, remain, continue, and be to the uses, upon the trusts, and for the ends and purposes hereinbefore declared or expressed concerning the same, and shall and may be holden, occupied, and enjoyed, and the rents, issues, profits, and proceeds thereof, received, retained, and applied accordingly, without any manner of hindrance, interruption, disturbance, claim, or demand whatsoever, by or from the said (*vendor*) or his heirs, or any person or persons now or hereafter claiming or possessing any estate, right, title, or interest, [at law or in equity,] in, to, or concerning the same, or any part thereof from, through, under, or in trust for him or them (2), (other than through, under, or by virtue of and so far

PURCHASES.

*Vendor to
Purchaser to
uses to bar
Dower.*

That the lands
shall remain to
the uses afore-
said.

(1) The above is the form which has been referred to in the preceding pages, as the most appropriate and correct where the conveyance is taken to a purchaser and his trustee for preventing dower, which, it will be perceived, differs from the usual covenant in purchase deeds, for quiet enjoyment by the purchaser and his heirs, where the estate is limited immediately to his and their use; but the variation is merely for the purpose of *technical* precision, and not therefore material, nor always attended to in practice.

Lands shall remain to afore-said uses.

(2) If the vendor took by devise or descent, see *ante*, p. 451, n. (4), 452, note.

Vendor taking
by devise, &c.

PURCHASES.

*Vendor to
Purchaser to
uses to bar
Dower.*

Free from in-
cumbrances.

as respects any such leases, or agreements for leases as aforesaid.) AND that free and clear, and clearly and absolutely discharged and exonerated, or otherwise by and at the expense of the said (*vendor*) his heirs, executors, or administrators, effectually defended, protected, and indemnified from and against all former and other [feoffments, gifts, grants, bargains and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate, right and title in or to dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king, or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore or hereafter have been, or shall or may be made, created, executed, committed, occasioned, or knowingly suffered by him the said (*vendor*) or his heirs, or any person or persons now or hereafter lawfully or rightfully claiming, or possessing any estate, right, title, or interest, [at law or in equity,] from, through, under, or in trust for him or them, or his or their acts, defaults, means, consent, or privity, (such leases and agreements as aforesaid only excepted.) AND moreover, that he the said (*vendor*) and his heirs,

Covenant for
further as-
surance.

and all and every persons or person, now or at any time hereafter rightfully claiming, or possessing any estate, right, title, or interest, [at law or in equity,] in, to, or respecting the hereditaments and premises hereby granted and released, or otherwise assured, or intended so to be, or any part thereof, from, through, under, or in trust for him or them, [other than persons claiming or entitled under or by virtue of such leases or agreements for leases as aforesaid, so far as respects their respective estates or interests under or by virtue of the same] shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the costs and expense of the said (*purchaser*) his heirs, appointees, or assigns, make, do, acknowledge, levy, suffer, execute, and perfect, [or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected, with all proper and sufficient despatch,] all and every such further and other lawful and reasonable acts, deeds, conveyances, matters and things whatsoever, [whether by fine or fines, with or without proclamations, common recovery or common recoveries, deed or deeds enrolled, the enrollment of these presents, feoffment, release, confirmation, declaration, or limitation of or to any use or uses, or other assurance or assurances, of record or not of record,] for the further, better, more perfectly, and absolutely, or satisfactorily granting, releasing, conveying, assuring, and confirming the same hereditaments, and premises, or any part or parcel thereof, and the possession,

PURCHASES.

*Vendor to
Purchaser to
uses to bar
Dower.*

PURCHASES.

*Vendor to
Purchaser to
uses to bar
Dower.*

reversion, and inheritance thereof, and the estate and interest expressed or intended to be hereby assured, with their and every of their rights, privileges, members, appendants, and appurtenances, to and for the use and behoof of the said (*purchaser*) his heirs, appointees, and assigns, in such manner and form as he or they, or his or their counsel in the law, (being of the degree of a barrister, shall lawfully and reasonably advise and require, [and prepare and tender (if the nature thereof permit) for his or their signature and execution; so that such further assurance or assurances do not contain nor imply any further or other warranty or covenant, than against or on the part of the person or persons who shall be required to make or execute the same, his, her, or their devisors, ancestors, heirs, executors, or administrators, and his, her, or their own respective acts, deeds, omissions, or defaults; and so that the person or persons, who shall be required to make or execute any such assurance or assurances, be not obliged to go from his, her, or their then place or respective places of abode for the making or executing the same, without a reasonable and sufficient sum being previously paid, tendered, or secured to him, her, or them, for or in respect of his, her, or their time, trouble, and expenses, which said acts, deeds, and assurances respectively, shall be and enure, (unless otherwise declared and expressed) in corroboration and confirmation of these presents, and of the estate and interest hereby, or mentioned or intended to be hereby

granted and released, or otherwise conveyed or PURCHASES.
assured as aforesaid] (1). IN WITNESS, &c.

*Vendor to
Purchaser to
uses to bar
Dower.*

(1) If any of the title deeds are retained by the vendor or his predecessor in title, see No. XVI. p. 183. in notes, and p. 196. Production deeds.

For various provisoes, &c. to be inserted when required by Provisoes, &c.
particular circumstances attending the title, or by agreement of parties, see No. XVI. p. 160. *et seq.*

If an outstanding term be intended to be surrendered or assigned to attend, see *ante*, No. XXVII.

* * As to the execution, attestation, or receipt for consideration money, &c. &c. see No. XV. p. 158. n. (82); No. XVI. p. 184. n. (28). *et seq.*; and see also INTRODUCTION to p. xliv, and 1. Execution, &c.

PURCHASES.

*Vendor to Joint-
Purchasers.*

No. XXIX.

*Conveyance by a Vendor to Two or more Pur-
chasers.*

Variations where they are intended to take as Joint-tenants, and where as Tenants in common.

Where the Purchasers are Co-partners in Trade, &c. &c. as below (1).

THIS INDENTURE of two parts, made the day of , in the year of the reign, &c. and in the year of our Lord . BETWEEN (*the vendor*) (2) of, &c. of the one part, and (*the purchasers*) of, &c. of the other part (3). WHEREAS,

- | | |
|------------------------|--|
| Tail. | (1) If the vendor be <i>tenant in tail</i> , see <i>ante</i> , No. XXII. |
| Life. | If tenant for <i>life</i> , see <i>ib.</i> No. XXIII. |
| Copyholds. | If part of the premises be copyhold, see <i>ante</i> , No. XX. |
| Reversion. | If he be entitled in <i>remainder</i> or <i>reversion</i> , see <i>ib.</i> No. XXIV. |
| Equity of redemption. | If the conveyance be of an <i>equity of redemption</i> only, see <i>ib.</i> No. XXV. |
| Moiety, &c. | If a <i>moiety</i> or other <i>undivided part</i> , see <i>ib.</i> No. XXVI. |
| Wife. | (2) If the vendor be married, and his wife be entitled to dower, make her a party with her husband, as Vol. II. No. XXXI. |
| Vendor taking to uses. | (3) If the vendor took the estate with limitations to a trustee to prevent dower, make such trustee a party of the <i>second part</i> , as Vol. II. No. XXXIV. |
| Wife. | If the purchaser be married, and his wife dowable, make a trustee as (a trustee named and appointed by and on behalf of |

&c. (1). AND WHEREAS the said (*purchasers*) have **PURCHASES.**
 contracted (2) with the said (*vendor*) for the ab-
 solute purchase of the messuages, lands, and he- **Vendor to Joint-**
 reditaments hereinafter described, and the inhe- **Purchasers.**
 ritage thereof in fee-simple in possession, free **Recitals.**
 from incumbrances, (other than as hereinafter is
 mentioned) at the sum of £ , and have re-
 requested that the same may be conveyed to them
 in the manner hereinafter expressed. Now THIS **WITNESS, the**
 INDENTURE WITNESSETH (3), that in pursuance and **vendor in con-**
 in execution of the said contract, and in consi- **sideration of**
 deration of the sum of £ of lawful money **the purchase**
 of the United Kingdom of Great Britain and **money.**
 Ireland, of English value and currency, to the
 said (*vendor*) in hand well and truly paid (4) by

the said (*purchaser*) for the purposes hereinafter mentioned) of
 the third part, as *ante*, No. XXVIII.

If the purchasers are co-partners in trade, and purchase the **Co-partners.**
 premises for the purposes of the business, make a trustee party
 of the *last* part.

(1) For the form of recitals of different species of deeds and **Recitals.**
 other events and transactions, see INDEX *voc.* RECITALS; and
 see *ante*, p. 123.

(2) If the premises were sold by *public auction* or otherwise **Auction, &c.**
 than by private contract, see *ante*, No. XVI. p. 163, n. (4).

(3) For the construction and reason of the different parts of **Construction.**
 the deed upon which no remarks are subjoined, see the notes in
 No. XV. p. 122, *et seq.*

(4) If the consideration be paid otherwise than in money, or **Consideration.**
 at any other time than at the execution of the conveyance, see
ante, No. XVI. p. 165, n. (6), *et seq.*

If the purchasers are co-partners, say,

“ AND whereas the said (*purchasers*) have agreed for the **Co-partners.**

PURCHASES.

Vendor to Joint-Purchasers.

the said (*purchaser*) at or immediately before the sealing and delivery of these presents, in equal moieties (1), the receipt whereof [and that the same is in full for the absolute purchase of the inheritance in fee-simple, in possession, of the lands and hereditaments hereinafter described], the said (*vendor*) doth hereby acknowledge, [and of and from the same doth acquit, release, discharge, and exonerate the said (*purchasers*) respectively, and their respective heirs, executors,

purchase of the said premises, for the purpose of more conveniently carrying on the said joint trade, and have requested that the same may be conveyed to the said (*trustee*) upon the trusts and in the manner hereinafter mentioned."

Consideration
equally paid.

(1) Where the purchasers advance the consideration in equal moieties, they will, it is said, be joint-tenants of the estate, unless the contrary be expressed; but if they advance the money in unequal parts, they will be tenants in common (in equity) although the estate should be jointly conveyed to them; *vid. cases* 3 Elem. Conv. 2d Ed. p. 423; but see also *Hayes v. Kingdom*, 1 Vern. 33; *Usher v. Agleworth*, 2 *ib.* 361.

Purchase money
unequally paid.

If the purchase money be not paid by the purchasers in moieties, say,

"In the manner following (that is to say) the sum of £ part of the said purchase or consideration money by the said (*one purchaser*) as and for the purchase and a conveyance of one undivided moiety or equal half part of the lands and hereditaments hereinafter described; and the sum of £ other and remaining part of the said purchase or consideration money, by the said (*other purchaser*) as or for the purchase and a conveyance of the other moiety or equal half part of the same lands and hereditaments, the receipt of which two several sums of £ and £ making together the said purchase money, or sum of £ and that the same is," &c. *as in text.*

administrators, and assigns, and also the said **PURCHASERS.**
lands, and hereditaments, by these presents,] He Vendor to Joint-
the said (*vendor*) HATH granted, bargained, sold, Purchasers.
aliened, and released, and by these presents BOTH
grant, bargain, sell, alien, release, and confirm
unto the said (*purchasers*)(1) and their heirs,
ALL(2), &c. or howsoever otherwise the said
messuages, lands, tenements, and hereditaments,
or any of them, now are, or is, or heretofore were
or was situated, tenanted, called, known, de-
scribed, or distinguished, and also all other the
messuages, lands, tenements, and hereditaments
(if any) which are comprised or described in a
certain indenture of bargain and sale for a year,
hereinafter particularly referred to. TOGETHER **General appur-**
with all [houses (3), out-houses, buildings, barns, **tenances.**
stables, coach-houses, dove-houses, yards, lights,
easements, ways, paths, passages, gardens, or-
chards, ponds, waters, lands covered with water,
water-courses, timber and other trees, woods,
underwoods, and the ground and soil thereof,
mines, quarries, rights and privileges of common
of every kind, and all and all manner of [other]

(1) If the purchasers are co-partners *in trade*, say,

Co-partners.

“Unto the said (*trustee*) and his heirs.”

(2) Here describe the subject of the conveyance by its an- **Parcels.**
cient and present name, situation, tenancy, &c. See descrip-
tions applicable to different species of property, INDEX, *voce*
PARCELS, and see *ante*, No. XVI. p. 128, n. (13), No. XVI.
p. 172, and No. XXVII. p. 405.

(3) For general words applicable to different kinds of real **General words.**
property, see INDEX, *voce* **GENERAL WORDS**.

PURCHASES. rights, privileges, advantages, appendants, and appurtenances whatsoever, to the said hereditaments, and premises, or any of them belonging, [or in anywise appertaining, or reputed or deemed so to be, or with the same or any of them, now or heretofore and usually holden, occupied, or enjoyed], (ALL which said messuages, lands, tenements, and hereditaments, are now in the actual possession of, or legally vested in the said (*purchasers*) by virtue of a bargain and sale (1) to them thereof made by the said (*vendor*) for five shillings consideration, by indenture bearing date on the day next before the day of the date of these presents, for the term of one year, commencing from the day next preceding the date of the same indenture; and by force of the statute made for transferring uses into possession). And the reversion and reversions, remainder and remainders, of or in the said hereditaments and premises, respectively; and all and every of the rents, issues, and profits thereof; AND all the estate, right, title, interest, use, trust, property, possession, claim, and demand whatsoever, both at law and in equity, of him the said (*vendor*) in, to, or concerning the said hereditaments and premises, or any part thereof. [TOGETHER with all deeds, muniments, writings, and evidences whatsoever, in anywise relating to the said hereditaments and premises, or any part thereof, either

Vendor to Joint-Purchasers.

Reference to the bargain and sale for a year.

Grant of title deeds.

Lease for a year.

(1) See the form of this bargain and sale, No. XIII. p. 110, and No. XIV. p. 117.

alone or together with other hereditaments or property of inferior value, now or hereafter in the possession or lawful power of the said (*vendor*) his heirs, executors, or administrators, or of any other person or persons from whom he or they can or may procure the same, without action or suit at law or in equity; and true and attested copies at the request of the said (*purchaser*) his heirs or assigns (1) (duly stampd); of all other deeds, muniments, writings, and evidences, (not being of record) now or hereafter in his or their custody or power, as aforesaid, in anywise relating to the same hereditaments and premises, or any part thereof, jointly with other hereditaments or property of greater or equal value; such copies, when first required to be made and delivered at the expense of the said (*vendor*) his heirs, executors, or administrators; but all future copies to be made and taken at the expense of the person or persons requiring the same.] To HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments, and premises hereinbefore described, and hereby granted and released, or otherwise assured, or intended so to be, with their and every of their rights, members, appendants, and appurtenances, unto the said (*purchasers*) and their heirs, to the use and behoof of

PURCHASES.

Vendor to Joint-Purchasers.

And copies.

To HOLD to the purchaser as joint-tenants in fee-simple.

(1) If the title deeds are not to be delivered to the purchaser, but a covenant entered into for the production of them, as contained in an underwritten schedule, add, Schedule.

“Whether mentioned in the schedule here underwritten or not.”

PURCHASES. them the said (*purchasers*) their heirs and assigns
 for ever (1).” AND the said (*vendor*) for himself,
 his heirs, executors, and administrators, BOTH

*Vendor to Joint-
Purchasers.*

Covenant by
vendor that he
is seised in fee.

Uses to prevent
dower.

(1) If the conveyance is intended to be taken by either of the purchasers to uses to prevent dower, omit the words within inverted commas, and add the limitation inserted, *ante*, No. XXVIII. p. 443, or *ib. n.* (1).

The student will find many of the printed forms of limitation to two persons as joint-tenants, run,

To joint-tenants
and the survivor.

“ To the use and behoof of the said (*joint tenants*) and the survivor of them, and the heirs and assigns of the survivor for ever.”

But this is improper, as it gives but a present *life* interest to each of them in the *joint-estate*, with a contingent remainder in fee to the *survivor*. A species of fee which it is difficult to convey satisfactorily to a scrupulous purchaser, and see Co. Lit. 191, a. n. (78).

Joint-tenants
must take an
unity of interest.

If it be intended to convey an estate to two or more persons as joint-tenants, it is necessary that an unity of interest be given to them, which must be coeval in point of creation, as in the above limitation, which is the proper form where both parties are in *esse* at the time; but where this is not the case, or where the capacity of the persons intended to take as joint-tenants, may possibly not occur at the same instant of time, (as if it be wished to limit an estate in joint-tenancy, to the children or heirs of A. B. and C. D. none of whom may yet be born), the limitation must be to a trustee or trustees to the use of such heirs, &c. in which case as all the *cestui que* uses would take under the conveyance to the trustee, each of them would by retrospection be in as from the same period, although by the death of their respective ancestors, they might become actually entitled at different times. Whereas if the estate were limited immediately to the heirs of A. B. and C. D., and A. B. and C. D. should (as in all human probability they would), die at successive times, their respective heirs by succeeding at different times would take as tenants in common, and see 3 Elem. Conv. p. 421, *et seq.*

hereby covenant, declare, grant, and agree, with **PURCHASERS.**

Vendor to Joint-Purchasers.

If the intent be that the purchasers shall take as tenants in common, say,

“ To have and to hold the said messuages, &c. unto the said (*purchasers*) and their heirs, to the use and behoof of them the said (*purchasers*) as tenants in common, and of the several and respective heirs and assigns of them the said (*purchasers*) for ever;” **Tenants in common.**

Or the limitation may be,

“ Unto the said (*purchasers*) and their heirs, as to and in respect of one moiety or full half part (the whole into two equal half parts being considered as divided) of and in the said messuages, &c. to the use and behoof of the said (*one of the purchasers*) his heirs and assigns for ever; and as to and in respect of the other or remaining moiety or half part of the same messuages, &c. to the use and behoof of the said (*other purchaser*) his heirs and assigns for ever.”

Real estate, although purchased by copartners for the purposes of their business, will not be considered as part of the stock in trade, *Smith v. Smith*, 5 Ves. 189; *Bell v. Phyn*, 7 *ib.* 453; *Balmain v. Shore*, 9 *ib.* 500; unless it be expressly declared by the parties that it shall be so, in which case it will be treated in all respects as personalty, *Thomson v. Dixon*, 3 Brow. C. C. 199; *Ripley v. Waterhouse*, 7 Ves. 435. **Copartners.**

If therefore the purchasers are copartners, and the premises be bought for the purposes of the joint-trade, the limitation may be,

“ Unto and to the use of the said (*trustee*) and his heirs, but nevertheless in trust for the said (*co-partners*) their executors, administrators, and assigns, to and for such ends, intents and purposes, and subject to such covenants, provisos, articles, and agreements as in and by a certain indenture or deed of co-partnership bearing (or intended to bear) date the day of _____, and made (or intended to be made) between them the said (*purchasers*) are or shall or may be de-

PURCHASERS. and to the said (*purchasers*) (1) their heirs and
Vendor to Joint- assigns, in the manner following (2) (that is to
Purchasers. say) that for and notwithstanding any act, deed,

clared concerning the same, or such other ends, intents, and purposes, as shall or may at any time, and from time to time hereafter be expressed, by any writing under their respective hands; and to be had and holden as or in the nature of personal estate, and to the end and intent that the same may be and be taken and considered as part of the co-partnership stock and effects of the said (*co-partners*)."

Tenants in
common.

(1) The covenants for the title with joint-purchasers should be joint and not severally with each of them, for such words will be nugatory, *Slingsby's Ca.* 5 Co. 18; *Jenk. Cent.* 262; *Johnson v. Wilson, Willis*, 248; for a covenant with two or more persons, although followed by words of severance as "and every of them," and although they are made of separate parts in the deed, will be a joint covenant; *Southcote v. Hoare*, 3 Taunt. 87. If therefore the purchasers are intended to take as tenants in common say, "with each of them the said A. and B. severally and not jointly;" or,

Tenants in
common.

"With and to the said (*one of the purchasers*) his heirs and assigns, as to and concerning one undivided moiety or equal half part of all and singular the said messuages, lands, tenements, hereditaments, and premises, with their respective rights, members, appendants, and appurtenances, and with and to the said (*other purchaser*) his heirs and assigns, as to and concerning one other moiety or equal half part of the same messuages, lands, tenements, hereditaments, and premises, with their respective appendants, &c. in the manner following," (that is to say), *as above*.

Wife.

(2) If the wife of the vendor be a party, add here a covenant to levy a fine, as in Vol. II. No. XXXI. making the covenant with the purchasers and their heirs to levy the fine to them and the heirs of A. (i.e. one of the purchasers only) and not to "their heirs."

matter, or thing whatsoever (1), made, done, executed, or knowingly occasioned, or suffered by him the said (*vendor*) (2) to the contrary, he the said (*vendor*) at the time of the sealing and delivery of these presents is lawfully, rightly, and absolutely seised in his demesne as of fee, in his own right, and to his own use, of all and singular the messuages, lands, tenements, hereditaments, and premises hereinbefore granted and released, or otherwise assured, or intended so to be, and every part thereof, as of, in, and for a good, clear, absolute, and indefeasible estate of inheritance in fee-simple, in possession, and in severalty, without the said estate or hereditaments being subject or liable to any [condition, proviso, power of revocation, or of limiting or declaring any new or other use or uses, or any other power, trust], qualification, restriction, matter, or thing whatsoever, which can or may determine, revoke, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever, (leases

PURCHASES.

Vendor to Joint-Purchasers.

(1) If the vendor took the estate to himself and a trustee, see Vol. II. No. XXXIV. marg. (t).

Vendor taking to trustee.

If part of the lands be copyhold, make such additions to this and the subsequent covenants as will be found in those *ante*, No. XX. p. 269.

Copyhold.

(2) If the vendor became entitled to the estate by devise, add,

Vendor taking by devise,

“ Or the said (*devisor*) deceased.”

If by descent, add,

or descent.

“ Or any of his ancestors,” and see *ante*, No. XV. p. 141, n. (39); and No. XVI. p. 178, *et seq.* in notes.

PURCHASES. or agreements for leases, of which the said (*purchasers*) respectively have notice, only excepted).

Vendor to Joint-Purchasers.

And that he hath right to convey in the manner aforesaid.

Covenant for quiet enjoyment.

AND also, that [for and notwithstanding any such act, deed, matter, or thing as aforesaid (except as aforesaid),] he the said (*vendor*) now hath in himself, full power, and lawful and absolute right, title and authority to grant, bargain, sell, release, and assure, all and singular the said hereditaments and premises, and the possession, reversion, and inheritance thereof, “unto and to the use and behoof of the said (*purchasers*), their heirs and assigns, in the manner aforesaid,” and according to the true intent and meaning of these presents. AND further, that (1) “they the said (*purchasers*), their heirs and assigns, shall or lawfully may, immediately upon the sealing and delivery of these presents, and at all times thereafter, enter into and upon, and hold, possess, and enjoy all and singular the same hereditaments and premises, with their respective rights, members, appendants, and appurtenances, and receive and retain the rents, issues, and profits thereof, to and for their own use and benefit,” without any manner of hinderance, interruption, molestation, disturbance, claim, or demand whatsoever, of, from, or

Dower.

(1) If the purchasers take as tenants in common, and the conveyance be made to uses for preventing dower, those parts of this and the preceding covenant, which are included within inverted commas, will be more correct if framed agreeably to the corresponding parts of the like covenants, *ante*, No. XXVIII. p. 452, 453.

by the said (*vendor*) or his heirs, or any person or persons now or hereafter claiming or possessing any estate, right, title, charge, or interest, [at law or in equity], in, to, or concerning the same, or any part thereof, from, through, under, or in trust for him or them (1). AND that free and clear, and clearly and absolutely discharged and exonerated, or by and at the expense of the said (*vendor*), his heirs, executors, or administrators, well and effectually protected and indemnified, from, and against all and all manner of former and other [feoffments, gifts, grants, bargains and sales, releases, settlements, demises, leases, contracts, devises, wills, conveyances and assurances, uses, trusts, intails, limitations, settlements, remainders, or reversions in the crown, or elsewhere, conditions, mortgages, judgments, decrees, statutes, recognisances, extents, executions, elegits, debts, legacies, portions, annuities, rents, right and title to dower, forfeitures, entries, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore or hereafter have been, or shall or may be created, executed, committed, occasioned, or knowingly suffered by the said (*vendor*) or his heirs (1), or by any person or persons, now or hereafter lawfully or rightfully

PURCHASES.

Vendor to Joint-Purchasers.

Free from incumbrances.

(1) If the vendor took by devise or descent, see *ante*, p. 467, n. (2). Vendor taking by devise, &c.

PURCHASES.

*Vendor to Joint-
Purchasers.*

Further as-
surance.

claiming, or possessing any estate, right, title, or interest, [at law or in equity,] from, through, under, or in trust for him, them, or any of them, or by or through his, their, or any or either of their acts, defaults, means, consent, or privity (such leases and agreements for leases as aforesaid only excepted). AND moreover, that he the said (*vendor*), and his heirs, and all and every person or persons, now or at any time hereafter claiming or possessing any estate, right, title, or interest, [at law or in equity], in, to, of, or concerning the hereditaments and premises hereby granted and released, or otherwise assured, or intended so to be, or any part thereof, from, through, under, or in trust for him or them, [other than any person or persons claiming or entitled under or by virtue of such leases, or agreements for leases, as aforesaid, so far as respects their several estates or interests under or by virtue of the same], shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the expense of the said (*purchasers*), or of one of them, or of their or his heirs or assigns, make, do, acknowledge, levy, suffer, execute, and perfect, [or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected, with proper and sufficient despatch], all and every such further and other lawful and reasonable acts, deeds, conveyances, matters, and things whatsoever, [whether by fine or fines, common recovery or common recoveries, feoffment, release, limita-

tion or declaration of or to any use or uses, or **PURCHASES.**
other assurance or assurances, whatsoever] for the Vendor to Joint-
further, better, more perfectly and absolutely or Purchasers.
satisfactorily granting, releasing, conveying, con-
firming, and assuring the same hereditaments and
premises, or any part thereof, and the possession,
reversion, and inheritance thereof, with their and
every of their rights, members, appendants, and ap-
purtenances, unto and to and for the use and behoof
of the said (*purchasers*), their heirs and assigns, free
from incumbrances as aforesaid, in such manner
as their or either of their counsel in the law (being
of the degree of a barrister), shall advise and re-
quire [so that such further assurance or assurances
do not contain or imply any further or other war-
ranty or more general covenants, on the part of
the person or persons who shall be required to
make or execute the same, than for or against
the acts, deeds, omissions, or defaults, of him, her,
or them, and of his, her, or their ancestors, or heirs,
executors, and administrators; and so that the
person or persons, who shall be required to make
the same, be not obliged to go from his, her, or
their place or respective places of abode, for that
purpose, without a reasonable and sufficient sum
being previously paid, tendered, or secured to him,
her, or them, for or in respect of his, her, or their
time, trouble, and expenses, which said acts,
deeds, and assurances, respectively, shall be and
enure (unless otherwise declared) in confirmation
of these presents, and of the estate and interest
hereby, or mentioned or intended to be hereby

PURCHASES.*Vendor to Joint-Purchasers.*

Agreement for pre-emption.

FURTHER WITNESS, that if either party wish to sell, the other shall have the refusal at a reasonable price.

granted and released, or otherwise assured (1).]

AND WHEREAS (2), it has been agreed between the said (*purchasers*) that in case either of them shall be desirous of disposing of his moiety or interest of or in the said premises, the other of them shall have the privilege of purchasing the same in preference to any other person, upon the terms hereinafter mentioned. NOW THIS INDENTURE FURTHER WITNESSETH, that in consideration of the said agreement, and for carrying the same into effect, they the said (*purchasers*), for themselves respec-

Title deeds.

(1) If the title deeds be not delivered to the purchaser, add here or at the end a covenant for their production, as in No. XVI. p. 196, or prepare a separate deed for that purpose, agreeably to the form referred to, INDEX VOC. TITLE DEEDS.

Pre-emption.

(2) The following proviso of pre-emption is not, as will be readily supposed, any necessary part of the deed; but as there are many inconveniences attending the seisin of a portion only of an estate, which (unless by mutual consent) can be remedied only by writ of partition or bill in equity, a proviso giving to each party the liberty of purchasing the share of his companion in preference to a stranger, appears, although not very general, to be extremely proper.

Copartners.

If the premises are purchased by copartners for the purposes of their trade. it will be proper to insert here a covenant by each of them, that

“Neither of them nor his heirs, shall or will, during the continuance of the said copartnership, grant, bargain, sell, demise, or otherwise transfer or dispose of his part or share or estate or interest in the said premises or any part thereof, without the consent in writing of the other of them, nor sue out any writ, or other legal process, nor file any bill, or institute any other proceedings at law or in equity for parting or dividing the same.”—And see *Bolman v. Shore*, 9 Ves. 500.

tively, and for their respective heirs, executors, and administrators, do hereby covenant, grant, declare, and agree, with and to each other, and the heirs and assigns of each other, in the manner following (that is to say), that in case either of them the said parties, his heirs or devisees, shall at any time hereafter be desirous of selling or disposing (other than by will), of his moiety, or other part or share, or estate or interest, of or in the hereditaments and premises so hereinbefore conveyed to them as joint-tenants (*or as tenants in common, as the case may be*), or mentioned or intended so to be as aforesaid, or of any part thereof, he and they respectively shall and will, before any such sale or disposition shall be made, or any contract entered into for that purpose, give, or cause to be given, unto the other of them, his heirs or devisees, three calendar months notice, in writing, under his or their hand or respective hands, of his or their wish or intention to sell or dispose of the same; and that upon such notice given by either of the said parties, his heirs or devisees, the other of them, his heirs or devisees, shall be at liberty to contract for, and shall or may become the purchaser of such moiety, part, share, or interest, of or in the said premises, concerning which such notice shall have been given as aforesaid, in preference to and before any other person or persons whomsoever, at and for a reasonable price or sum, to be paid for the same by such party, his heirs, executors, or administrators, so that such party,

PURCHASES:

Vendor to Joint-Purchasers.

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*Vendor to Joint-
Purchasers.*

In case of difference as to value, reference to be made to arbitrators.

his heirs or devisees, shall make application, or give notice to the other of them, his heirs or devisees for that purpose, before the end of one calendar month next after such notice of sale or disposition shall have been given to him or them.

AND it is hereby further declared and agreed by and between the said parties, that if they or their respective heirs or devisees shall not agree between themselves, with respect to the price or sum to be paid or given for the said premises, then and in such case the same shall be referred to the determination of two indifferent persons, one to be named by each of the said parties within fourteen days next after such disagreement shall have taken place, and shall have been signified by either of them to the other in writing under his hand; and in case the said arbitrators shall differ in opinion concerning the value of or price to be paid or given for the said premises, then such two persons shall nominate one other indifferent person as umpire, to determine or assist them in determining the same; and in case such two persons cannot agree upon, or shall refuse or decline, for the space of twenty-one days next after reference shall be made to them as aforesaid, to appoint such umpire, then the person whom his Majesty's Attorney-General, for the time being, shall appoint or name for that purpose, on application to him made by either of the said parties, shall by such appointment or nomination alone be fully constituted a lawful umpire concerning the pre-

mises, in like manner as if he had been appointed by or together with the said arbitrators first named, and the award, determination, or judgment of the said two arbitrators, so to be named as aforesaid, either alone or together with the said third person or umpire, or of the said third person, and either of the said two arbitrators first named, shall be conclusive and binding upon each of the said parties, his heirs, devisees, executors, administrators, and assigns, so that such award or determination be put into writing, and be signed by the said arbitrators, or the said umpire, or by any two of them, and be ready to be delivered to the said parties at or before the end of one calendar month next after reference shall have been made to them or him as aforesaid ; and it is hereby further declared and agreed, that the price or valuation which shall be so fixed or ascertained, and adjudged or awarded to be paid or given, as or for the value or purchase of or for the share or interest of or in the said hereditaments and premises as aforesaid, shall be forthwith paid for the same by the party desiring to become the purchaser thereof ; and that good and sufficient conveyances and assurances in the law, to be prepared at the expense of the purchaser, his heirs or assigns, by his or their counsel, shall forthwith be executed by the vendor of the same premises to the purchaser or purchasers thereof, or to such person or persons as he or they shall direct or appoint in that behalf ; and for the better enforcing the performance of the said arbitrament or award,

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*Vendor to Joint-
Purchasers.*

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*Vendor to Joint-
Purchasers.*

it is hereby further declared and agreed, that the reference or submission for or respecting the same, shall at the instance of either of the parties interested therein, be made a rule of one of his Majesty's courts at Westminster, according to the statute in such case provided (1); and for the true performance of this present covenant and agreement, each of the said parties to these presents doth hereby bind himself, his heirs, executors, and administrators, to the other of them, his heirs, executors, administrators, and assigns, in the penal sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, of English value and currency, to be paid as for or in the nature of fixed, ascertained, and liquidated damages (2). IN WITNESS, &c.

Rule of court.

(1) It is proper in a clause of reference to arbitration to provide that either party should be at liberty to make the submission a rule of court, as an examination of the witnesses relative to the subject may be taken on oath before a judge of the court of which the rule is obtained.

Nomine pœnæ.

(2) As to *nomine pœnæ*, see *ante*, p. 15. n. (30).

Term.

If there be an outstanding term which is intended to be assigned to attend the inheritance, it may be done here, see *ante*, No. XXVIII. p. 411. and *ib.* n. (1).—409. n. (2).—419. n. (1). *et seq.*

Provisoes, &c.

For various provisos, &c. to be inserted when required by particular circumstances attending the title, or by agreement of parties, see *ante*, No. XVI. p. 160, *et seq.*

Execution, &c.

* * As to the execution, attestation, or receipt for consideration money, &c. &c. see *ante*, No. XV. p. 158. n. (82); No. XVI. p. 184, n. (28), *et seq.*; and see also INTRODUCTION, p. xliv, and l.

PURCHASES.

*Vendor to
Trustees of a
Settlement or
Will.*

No. XXX.

*Conveyance by a Vendor to Trustees purchasing
Lands under a Power in a Marriage Settlement,
authorising them to invest Money upon Land.*

*Variations where the Purchasers are Trustees or Execu-
tors of a Will, &c. &c. as below (1).*

THIS INDENTURE, of three parts, made the
day of _____, in the _____ year of the reign,
&c. and in the year of our Lord _____ . BE- Parties.
TWEEN (*the vendor*) (2) of, &c. _____ of the
first part, _____ of, &c. _____ of the second
part, and (*the purchasers*) of, &c. _____ of the

(1) If the vendor be tenant in tail, see *ante*, No. XXII.

Tail.

If tenant for life, see *ib.* No. XXIII.

Life.

If he be entitled in remainder or reversion, see *ib.* No. XXIV.

Reversion.

If the conveyance be of an equity of redemption only, see *ib.*
No. XXV.

Equity of re-
demption.

If of a moiety or other undivided part, see *ib.* No. XXVI.

Moiety, &c.

(2) If the vendor be married, and his wife be entitled to
dower, make her a party with her husband, as Vol. II. No.
XXXI.

Wife.

If the vendor took the estate with limitations to a trustee to
prevent dower, make such trustee a party of the second part, as
Vol. II. No. XXXIV.

PURCHASES.

*Vendor to
Trustees of a
Settlement or
Will.*

Recital of marriage settlement.

third part. WHEREAS, &c. (1). AND WHEREAS (2), by indentures of lease and release bearing date respectively on or about the and days of which was in the year . The release being of parts, and made or expressed to be made between, &c. (and being or purporting to be a settlement made on the marriage of the said (*husband*) with the said (*wife*) his wife, the sum of £ three per cent. consols, bank annuities, was transferred into the names of the said (*purchasers*) in the books of the Go-

Recitals.

(1) For the form of recitals of different species of deeds and other events and transactions, see INDEX *voc.* RECITALS.

Devises.

(2) If the purchasers are devisees under a will, recite the will, as

Recital of will.

“ AND WHEREAS the said (*testator*) by his last will and testament in writing, bearing date the day of which was in the year , gave and bequeathed the sum of £ three per cent consol. bank annuities unto the said (*trustees*), their executors, administrators, and assigns, upon trust to make sale, &c. *as in the text*, p. 179. marg. *. AND WHEREAS the said (*testator*) afterwards departed this life without revoking or altering his said will, and the same was soon after his decease duly proved by the said (*trustees*), his executors therein named, in the prerogative court of the Archbishop of Canterbury, and therefore the said (*trustees*) caused the said £ three per cent. consol. bank annuities, to be transferred into their joint names in the books of the Governor and Company of the Bank of England, upon and for the trusts, intents, and purposes of the said will. And whereas the said (*trustees*) in pursuance of the directions or authority contained in the said in part recited will have contracted with,” &c. *as in the text*, p. 480. marg. *.

vernor and Company of the Bank of England, upon the trusts, and to and for the ends, intents, and purposes, and with, under, and subject to the powers, provisos, agreements, and declarations thereafter expressed concerning the same. And in the said indenture of release was contained a proviso or agreement that it should be lawful for the said (*purchasers*) and the survivor of them, his executors and administrators, and for all or any other trustee or trustees, for the time being, of the said trust property, with the consent and approbation in writing of the said (*husband and wife*) at any time during their joint lives, or with the like consent and approbation of the survivor of them, at any time during his or her life, and after the decease of such survivor during the minority of any child or children of the said marriage, then at the sole discretion of the said trustees or trustee, to make sale, dispose of, transfer, and convert into money, the said £ three per cent. consolidated bank annuities, or any part thereof, for the then current or market price of the same, and lay out, apply, and invest the money arising, or to be produced thereby, in the purchase of any freehold or copyhold messuages, lands, tenements, or hereditaments, in that part of the United Kingdom of Great Britain and Ireland called England, or within the principality of Wales, of an estate of inheritance in fee-simple in possession, to be settled, conveyed, and assured by the said (*purchasers*) or the survivor of them, or his heirs, to such or the like uses, upon such

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*Vendor to
Trustees of a
Settlement or
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or the like trusts, and to and for such or the like ends, intents, and purposes, and under and subject to such or the like powers, provisos, declarations, and agreements, as therein mentioned concerning the said bank annuities, and the dividends and interest thereof, or as near thereto as the nature of the said property and other circumstances would permit, or to, for, upon, and subject to such and so many of them as should then be undetermined, and capable of taking effect. AND WHEREAS the said (*wife*) departed this life on or about the day of leaving the said her husband her surviving. AND WHEREAS in pursuance of the power contained in the said in part recited settlement, the said (*purchasers*), with the privity and consent of the said (*husband*) testified by his being a party to, and sealing and delivering these presents, have contracted with (1) the said (*vendor*) for the absolute purchase of the messuages, lands, and hereditaments, hereinafter described, free from incumbrances (other than as hereinafter is mentioned) at the sum of £ and for the purpose of completing the said purchase, have sold out and disposed of the sum of £ part of the said three per cent. consolidated bank annuities for the sum of £ exclusive of commission (being the best market

Auction, &c.

(1) If the premises were sold by public auction or otherwise than by private contract, see *ante*, No. XVI. p. 163, n. (4)

price of or for the said annuities); and have requested that the said lands and hereditaments may be conveyed and assured to them in the manner hereinafter expressed (1). Now THIS INDENTURE WITNESSETH (2), that in pursuance and execution of the said contract, and in consideration of the sum of £ (3) of lawful money of that part of the United Kingdom of Great Britain and Ireland, called England, to the said (*vendor*) in hand well and truly paid by the said (*purchasers*) at or immediately before the sealing and delivery of these presents, by and with the privity, consent, and approbation of the said (*husband*) testified as aforesaid, the receipt whereof, [and that the same is in full for the absolute purchase of the inheritance in fee-simple, in possession, of the messuages, lands, tenements, and hereditaments hereinafter described], the said (*vendor*) doth hereby acknowledge, [and of and from the same doth fully and absolutely acquit, release, discharge, and exonerate the said (*purchasers*) and each of them, and their respective heirs, executors, administrators, and assigns, and also the said hereditaments, by these presents], He the said

PURCHASES.

*Vendor to
Trustees of a
Settlement or
Will.*

WITNESS,
in consideration
of the purchase
money.

(1) If the vendor took the estate to uses to prevent dower, insert here the witnessing part of Vol. II. No. XXXIV.

Vendor taking
to prevent
dower.

(2) For the construction and reason of the different parts of the deed upon which no remarks are subjoined, see notes to No. XV. *ante*, p. 122; *et seq.*

Construction.

(3) If the consideration be paid otherwise than in money, or at any other time than at the execution of the conveyance, see *ante*, No. XVI. p. 165, n. (6), *et seq.*

Consideration.

PURCHASES.

*Vendor to
Trustees of a
Settlement or
Will.*

The vendor
grants and re-
leases the land,
&c.

General appur-
tenances.

(*vendor*) HATH granted, bargained, sold, aliened, and released, and by these presents, DOTH grant, bargain, sell, alien, release, and confirm unto the said (*purchasers*) and their heirs, ALL (1), &c. or howsoever otherwise the said messuages, lands, tenements, and hereditaments, or any of them, now are, or is, or heretofore were or was situated, tenanted, called, known, described, or distinguished, and also all other the messuages, lands, tenements, and hereditaments (if any), which are described or comprised in a certain indenture of bargain and sale for a year, hereinafter referred to. TOGETHER with all [houses (2), out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, benefit and advantage of ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, lands covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights, and privileges of common, of every kind,] and all and all manner of [other] rights, privileges, easements, appendants, and appurtenances whatsoever, to the said hereditaments and premises, or any part thereof respectively belonging, [or

Parcels.

(1) Here describe the lands, &c. by their ancient and present name, situation, tenancy, &c. See descriptions applicable to different species of property, INDEX, *voce* PARCELS.—And see *ante*, No. XV. p. 128 n. (13). No. XVI. p. 172. and No. XXVII. p. 401.

General words.

(2) For general words applicable to different kinds of real property, see INDEX, *voce* GENERAL WORDS.

in anywise appertaining, or reputed or deemed so to be, or with the same or any of them, now or heretofore holden, used, occupied, or enjoyed,] (ALL which said hereditaments are now in the actual possession of, or legally vested in the said (*purchasers*) by virtue of a bargain and sale (1) to them thereof made by the said (*vendor*) for five shillings consideration) by indenture bearing date on the day next before the day of the date of these presents, for the term of one year, commencing from the day next preceding the day of the date of the same indenture; and by force of the statute made for transferring uses into possession, and the reversion and reversions, remainder and remainders, of and in the said hereditaments; and all and singular the rents, issues, profits, and proceeds thereof. AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, [both at law and in equity], of him the said (*vendor*) in, to, or concerning the same, or any part thereof; [TOGETHER with all deeds, muniments, writings, and other evidences of title whatsoever, in anywise relating thereto, or to any part thereof, either alone or together with other hereditaments or property of inferior value, which now are or hereafter shall or may be in the possession or lawful power of the said (*vendor*) his heirs or as-

PURCHASES.

*Vendor to
Trustees of a
Settlement or
Will.*

Reference to
the bargain and
sale for a year.

Grant of title
deeds.

(1) See the form of this bargain and sale, No. XIII. p. 110. and No. XIV. p. 117.

Bargain and
sale.

PURCHASES.

*Vendor to
Trustees of a
Settlement or
Will.*

Copies.

**To HOLD to
the purchasers
in trust, &c.**

signs, or of any person or persons from whom he or they can or may procure the same, without action or suit at law or in equity; and true and attested copies, duly stamped, when required by the said (*purchasers*) or either of them, or other the trustees or trustee of the said trust estates for the time being, or any cestuique trust thereof, of all other deeds, muniments, writings, and evidences, (not being of record) which now are, or hereafter shall or may be so in his or their possession, custody, or power as aforesaid, in anywise relating to the same hereditaments and premises, or any part thereof, jointly with other hereditaments or property of equal or greater value, such copies when first required to be made and delivered at the expense of the said (*vendor*) his heirs, executors, or administrators, but all future copies to be made and taken at the expense of the person or persons requiring the same. **TO HAVE AND TO HOLD** the said messuages, lands, tenements, hereditaments, and premises hereinbefore, and in the said indenture of bargain and sale described, and hereby granted and released, or otherwise assured, or intended so to be, with their and every of their rights, members, appendants, and appurtenances, unto the said (*purchasers*) their heirs and assigns, but nevertheless to the uses, upon the trusts, and to and for the ends, intents, and purposes, and with, under, and subject to the powers, provisoes, conditions, limitations, and agreements hereinafter declared or expressed, concerning the same,

that is to say, TO THE USE, &c. (1), and to or PURCHASES.
 for no other uses, trusts, intents, or purposes
 whatsoever (2). AND the said (*vendor*) for him-
 self, his heirs, executors, and administrators,
 BOTH hereby covenant and declare, to and with
 the said (*purchasers*) their heirs and assigns in
 the manner following (3), (that is to say) that
 for and notwithstanding any act, deed, mat-
 ter, or thing whatsoever, at any time heretofore

*Vendor to
Trustees of a
Settlement or
Will.*

Covenant by
vendor that he
is seised in fee.

(1) Here insert the limitations to the cestuique trust, &c. Declaration of
 agreeably to the settlement or will; unless where the uses, &c. trusts or uses.
 are fully set out in the deed or will directing the purchase, and are
 such as will accord with the nature of the land, &c. purchased,
 in which case the limitation may be,

“To the uses, upon the trusts, and to and for the ends,
 intents, and purposes, and with, under, and subject to the
 powers, provisoes, conditions, and limitations, in or by the
 said hereinbefore in part recited indenture (*or will*) declared
 or expressed of or concerning the lands and hereditaments
 thereby directed to be purchased as aforesaid, or such and
 so many of them as are now in being, or capable of taking
 effect.”

But in other cases it will be proper to set out the par-
 ticular estate, &c. which the celled trusts are intended to
 take.

(2) If the vendor's wife be a party, add here a covenant to Wife.
 levy a fine, for the form of which see Vol. II. No. XXXI.
 marg. (w).

If any part of the lands be copyhold, a covenant to surrender Copyholds.
 them may be properly introduced here.—See the form of such
 covenant, *ante*, No. XVIII. p. 266.

(3) If the vendor took the estate to himself and a trustee, see Trustee.
 Vol. II. No. XXXIV.

If a part of the lands be copyhold, make such additions to Copyholds.
 this and the subsequent covenants as will be found in those of
 No. XX. p. 269, *et seq.*

PURCHASES.

*Vendor to
Trustees of a
Settlement or
Will.*

made, done, executed, or knowingly occasioned or suffered by him the said (*vendor*) (1) to the contrary, he the said (*vendor*) at the time of the sealing and delivery of these presents, is lawfully, rightly, and absolutely seised in his demesne, as of fee, in his own right, and to his own use, of all and singular the messuages, lands, tenements, hereditaments, and premises hereinbefore granted and released, or otherwise assured, or intended so to be, as of, in and for a good, perfect, clear, absolute and indefeasible estate of inheritance, in fee-simple, in possession, and in severalty, without the said estate or premises being subject or liable to any [manner of trust, condition, power of revocation, or of limiting or declaring any new or other use or uses, or any other] qualification, restriction, matter, or thing whatsoever, which can or may revoke, determine, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever, (leases and agreements for leases, of which the said (*purchasers*) at the sealing and delivery of these presents have notice, and the land and sewers taxes only excepted.) AND also, that (for and notwithstanding any such act, deed, matter, or thing as aforesaid), he the said (*vendor*) now hath in himself full power,

And hath right
to convey.

Vendor taking
by devise,

or descent,

(1) If the vendor became entitled to the estate by devise, add,
“ Or the said (*devisor*) deceased.”

If by descent, add,

“ Or any of his ancestors.”

And see Vol. I. No. XV. p. 141. n. (39); and No. XVI. p. 178, *et seq.* in notes.

and lawful and absolute right and title to grant, **PURCHASERS.**
 bargain, sell, release, and assure, all and singular
 the said hereditaments and premises, and the pos-
 session, reversion, and inheritance thereof, unto
 the said (*purchasers*), their heirs and assigns, to
 the uses (1), upon the trusts, and for the ends, in-
 tents, and purposes hereinbefore mentioned or
 referred to concerning the same, and according to
 the true intent and meaning of these presents.
 AND further, that all and singular the same here-
 ditaments and premises, with their and every of
 their rights, members, appendants, and appurte-
 nances, shall and may henceforth and from time to
 time, and at all times hereafter, remain and be, to
 the uses, upon the trusts, and to and for the ends,
 intents, and purposes aforesaid, and be entered
 into and upon, and had, holden, possessed, and
 enjoyed, and the rents, issues, profits, and pro-
 ceeds, to arise or be payable for or in respect of
 the same, be received and applied accordingly,
 without any manner of hindrance, interruption,
 disturbance, claim, or demand whatsoever, by or
 from the said (*vendor*) or his heirs (2), or any person
 or persons now or hereafter claiming or possessing
 any estate, right, title, or interest, [at law or in
 equity,] in, to, or concerning the same, or any part
 thereof, from, through, under, or in trust for him
 or them, (other than for or in respect of any such

*Vendor to
Trustees of a
Settlement or
Will.*

That the land
shall remain
to the uses
aforesaid.

(1) "Or unto and to the use of the said (*purchasers*) and their heirs, upon the trusts," &c. (*as above*), or *as the case may be*.

(2) See *ante*, p. 486, n. (1).

PURCHASES.

*Vendor to
Trustees of a
Settlement or
Will.*

Free from in-
cumbrances.

leases or agreements for leases, and land and sewers taxes as aforesaid). AND that free and clear, and clearly and absolutely discharged and exonerated, or otherwise by and at the expense of the said (*vendor*) his heirs, executors, or administrators, effectually defended, protected, and indemnified, of, from, and against all former and other [feoffments, gifts, grants, bargains and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate, right and title to dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king, or any of his predecessors, legacies, portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore or hereafter have been, or shall or may be made, created, executed, or committed, or knowingly occasioned, or suffered by the said (*vendor*) (1) or his heirs, or any other person or persons, now or hereafter lawfully or rightfully claiming, or possessing any estate, right, title, or interest, at law or in equity, from, through, under, or in trust for him or them, or by or through his or their acts, defaults, means, consent, or privity, (such leases and agreements as

Vendor taking
by devise, &c.

(1) If the vendor took by devise or descent, see *ante*, p. 486. n. (1).

aforesaid, and the estates or interests thereby created, only excepted). AND moreover, that he the said (*vendor*) and his heirs, and all and every other person or persons now or at any time hereafter lawfully or rightfully claiming or possessing any estate, right, title, or interest, [at law or in equity], in, to, or respecting the hereditaments, and premises hereby granted and released, or otherwise assured, or intended so to be, or any part thereof, from, through, under, or in trust for him or them, (other than persons claiming or entitled under or by virtue of such leases, or agreements for leases, as aforesaid, so far as respects their respective estates or interests under or by virtue of the same) shall and will from time to time, and at all times hereafter, upon every reasonable request of the said (*purchasers*) or either of them, or the heirs or assigns of the survivor of them, or other person or persons who for the time being shall or may be entitled to any estate or interest under or by virtue of the said hereinbefore in part recited indentures of settlement, and at the expense and costs of the same person or persons, make, do, acknowledge, levy, suffer, execute, and perfect, [or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected,] with all due expedition, all and every such further and other lawful and reasonable acts, deeds, conveyances, matters, and things whatsoever, [whether by fine or fines, with or without proclamations, common recovery or common recoveries, deed or deeds, enrolled or

PURCHASES.

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Will.*

Covenant for
farther as-
surance.

PURCHASERS.

*Vendor to
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Settlement or
Will.*

otherwise, feoffment, release, confirmation, declaration, or limitation, of or to any use or uses, or other assurance or assurances, of record or not of record], for the further, better, more perfectly and absolutely or satisfactorily granting, releasing, conveying, confirming, and assuring the same hereditaments and premises, or any part or parcel thereof, and the possession, reversion, and inheritance thereof, with their and every of their respective rights, members, appendants, and appurtenances, unto the said (*purchasers*) and their heirs, or other the trustees or trustee for the time being of the said trust estate and premises, their or his heirs and assigns, to the uses, upon the trusts (1), and for the ends, intents, and purposes hereinbefore expressed or referred to, (or such of them as shall be then in being, and capable of taking effect) free from incumbrances as aforesaid, in such manner and form as the person or persons making such request, or his, her, or their, or any or either of their counsel in the law, (being of the degree of a barrister) shall advise and require, and prepare and tender, (if the nature thereof permit) for his or their signature and execution; [so that such further assurance or assurances, or any of them, do not contain nor imply any further or other warranty or covenant, than against or on the part of the person or persons who shall be required to make or execute the same, his, her, or

(1) "Or unto and to the use of them the said (*purchasers*) and their heirs, upon the trusts," &c. *as above*.

their devisors, ancestors, heirs, executors, and administrators, and his, her, or their own respective acts, deeds, omissions, or defaults, and so that the person or persons, who shall be required to make or execute any such assurance or assurances, be not obliged to go from his, her, or their then place or respective places of abode, for the making or executing the same, without a reasonable and sufficient sum being previously paid, tendered, or secured to him, her, or them, for or in respect of his, her, or their time, trouble, and expenses, which said acts, deeds, and assurances respectively, shall be and enure (unless otherwise declared or expressed) in corroboration and confirmation of these presents, and of the estate and interest hereby, or mentioned or intended to be hereby granted and released (1). † IN WITNESS, &c.

PURCHASES.

***Vendor to
Trustees of a
Settlement or
Will.***

(1) If any of the title deeds are retained by the vendor or his predecessors in title, see No. XVI. p. 183. in notes, and p. 196. Production
deeds.

† In general it is proper that trustees purchasing premises should declare from what fund the money has arisen, as they may have money in their hands arising under the same deed or will, but applicable to different purposes. Purchase fund.

For example, the accumulation of rents during the minority of the eldest son may be directed to be laid out in lands, and so may the portions of younger children, and, under such circumstances, without a declaration from the trustees or other evidence, from which of these funds the purchase money arose, it might, in case of their decease, be a dispute to who the lands ought to belong.

This may be done by adding to the deed where the circumstance does not appear by the recitals, as,

" AND the said (*purchasers*) and each of them do and doth hereby declare, that the sum of £ so paid by

PURCHASES. them for the purchase of the hereditaments by these presents expressed to be released, or otherwise assured to them as hereinbefore is mentioned, was and is part of the sum of £ , provided in or by the said in part recited indenture of settlement of the day of for the portion of one of the younger children of the said by the said his late wife deceased, (*or as the case may be.*")

Provisoes, &c. For various provisos, &c. to be inserted when required by particular circumstances attending the title, or by agreement of parties, see *ante*, No. XVI. p. 160. *et seq.*

Execution, &c. As to the execution, attestation, receipt for consideration money, &c. &c. see *ante*, No. XV. p. 158. n. (82); No. XVI. p. 184. n. 28. *et seq.*; and see also Introduction, p. xliv. and l.

END OF VOL. I,

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